Control Number: 46245

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46245.

Garcia, Desiree

From: Journeay, Stephen
Sent: Thursday, January 17, 2019 11:24 AM
To: agency_req_rep@oag.texas.gov
Cc: Hubenak, Priscilla; Billings-Ray, Kellie (Kellie.Billings-Ray@oag.texas.gov); Secord, Linda; Hulme, John; Journeay, Stephen; Garcia, Desiree; Pemberton, Margaret; Commissioners Offices
Subject: Request representation related to PUC Docket No. 46245, Double Diamond v. PUC, D-1-GN-19-000085
Attachments: 46245 D-1-GN-19-000085 Double Diamond v PUC.pdf; 46245 D-1-GN-19-000085 Double Diamond v PUC.pdf

Mr. Darren L. McCarty, Deputy, Attorney General for Civil Litigation

Re: Double Diamond Utilities Company, Inc. v. PUC, No. D-1-GN-19-000085, 250th District Court, Travis County

Dear Mr. McCarty:

The Public Utility Commission of Texas was served with a citation in the above referenced cause number on January 11, 2019. This letter is to request representation by the Attorney General in this matter. A copy of the petition and citation is attached.

This lawsuit relates to PUC Docket No. 46245 – Application of Double Diamond Utility Company, Inc. for a Rate/Tariff Change. The Commission granted its original order in August of last year, subsequently grant rehearing, and has not yet issued its order on rehearing.

If you need further information, please call me at 512-936-7215

Stephen Journeay
Commission Counsel

Office of Policy and Docket Management
Public Utility Commission of Texas

stephen.journeay@puc.texas.gov

(512) 936-7215
(512) 936-7208 (fax)

719

C I T A T I O N

T H E S T A T E O F T E X A S

CAUSE NO. D-1-GN-19-000085

RECEIVED
2019 JAN 17 PM 2:14
PUBLIC UTILITY COMMISSION
FILING CLERK

DOUBLE DIAMOND UTILITIES COMPANY, INC.

, Plaintiff

vs.

PUBLIC UTILITY COMMISSION OF TEXAS; DEANN T. WALKER, ARTHUR C. D'ANDREA, and SHELLY BOTKIN, in their official capacities as Commissioners of the Public Utility Commission of Texas; JOHN PAUL URBAN, in his official capacity as Executive Director of the Public Utility Commission of Texas or his successor,

, Defendant

TO: DEANN T. WALKER, CHAIRMAN OF THE PUC
1701 NORTH CONGRESS AVE
AUSTIN, TEXAS 78701

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the ORIGINAL PETITION of the PLAINTIFF in the above styled and numbered cause, which was filed on JANUARY 4, 2019 in the 250TH JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, January 10, 2019.

REQUESTED BY:
KELLI A. N. CARLTON
4301 WESTBANK DR STE B-130
AUSTIN, TX 78746
BUSINESS PHONE: (512) 614-0901 FAX: (512) 900-2855

Velva L. Price
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, TX 78701

PREPARED BY: JIMENEZ CHLOE

-- - -- - -- - -- - -- - -- **R E T U R N** -- - -- - -- - -- - -- - -- - --

Came to hand on the _____ day of _____, _____ at _____ o'clock ____M., and executed at _____ within the County of _____ on the _____ day of _____, _____, at _____ o'clock ____M., by delivering to the within named _____, each in person, a true copy of this citation together with the PLAINTIFF'S ORIGINAL PETITION accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Carlos B. Lopez
Constable Pct 5, Travis County, Texas

Service Fee: $ _____

_____
Sheriff / Constable / Authorized Person

Sworn to and subscribed before me this the

_____ day of _____, _____.

By: _____

_____
Printed Name of Server

_____
Notary Public, THE STATE OF TEXAS

_____ County, Texas

DELIVERED THIS 11th DAY OF JAN 2019

CONSTABLE CARLOS B. LOPEZ P01 - 000073388
CONSTABLE, PCT. 5, TRAVIS COUNTY, TEXAS
BY: _____ 520
DEPUTY

D-1-GN-19-000085

☐ Original ☐ Service Copy

CAUSE NO. D-1-GN-19-000085

DOUBLE DIAMOND UTILITIES COMPANY, INC., Plaintiff.	§	IN THE DISTRICT COURT OF
v.	§	250TH JUDICIAL DISTRICT
PUBLIC UTILITY COMMISSION OF TEXAS; DEANN T. WALKER, ARTHUR C. D'ANDREA, and SHELLY BOTKIN, in their official capacities as Commissioners of the Public Utility Commission of Texas; JOHN PAUL URBAN, in his official capacity as Executive Director of the Public Utility Commission of Texas or his successor, Defendants.	§	TRAVIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE TRAVIS COUNTY DISTRICT JUDGE:

COMES NOW Double Diamond Utilities Company, Inc. ("DDU"), and files this Original Petition against Defendants, the Public Utility Commission of Texas, DeAnn T. Walker, Arthur C. D'Andrea, and Shelly Botkin, in their official capacities as Commissioners of the Public Utility Commission of Texas, and John Paul Urban, or his successor, in his official capacity as Executive Director of the Public Utility Commission of Texas. DDU files this request for declaratory judgment and judicial review of the Final Order entered by the Public Utility Commission of Texas in Docket No. 46245; SOAH Docket No. 473-17-0119.WS (the "Final Order"), and, in support thereof, would respectfully show the Court the following:

I. DISCOVERY LEVEL

1. Discovery in this matter should be conducted under Level 3 of the Discovery Control Plan set forth in Texas Rule of Civil Procedure 190.4, and DDU affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169.

II. RULE 47 STATEMENT

2. This is an administrative appeal of a rate case. DDU seeks monetary relief of $100,000 or less and non-monetary relief.

III. PARTIES

3. Plaintiff Double Diamond Utilities Company, Inc., is a Texas corporation having a principal place of business at 5495 Belt Line Road, Suite 200, Dallas, Texas 75254.

4. Defendant Public Utility Commission of Texas (the "PUC") is a state governmental agency. The PUC may be served with process by serving its Executive Director, John Paul Urban, or his successor, at the PUC's business office located at 1701 North Congress Avenue, Austin, Travis County, Texas, or at such other place as he may be found.

5. Defendant DeAnn T. Walker is the Chairman of the PUC, and is sued in her official capacity. Chairman Walker may be served with process at the PUC's business office located at 1701 North Congress Avenue, Austin, Travis County, Texas, or at such other place as she may be found.

6. Defendant Arthur C. D'Andrea is sued in his official capacity as a Commissioner of the PUC, and may be served with process at the PUC's business office located at 1701 North Congress Avenue, Austin, Travis County, Texas, or at such other place as he may be found.

7. Defendant Shelly Botkin is sued in her official capacity as a Commissioner of the PUC, and may be served with process at the PUC's business office located at 1701 North Congress Avenue, Austin, Travis County, Texas, or at such other place as she may be found.

8. Defendant John Paul Urban, or his successor, is sued in his official capacity as Executive Director of the PUC, and may be served with process at the PUC's business office

located at 1701 North Congress Avenue, Austin, Travis County, Texas, or at such other place as he may be found.

9. Pursuant to Texas Government Code §2001.176(b)(2), a copy of this pleading will be served on the other parties of record in the administrative proceeding before the PUC.

10. White Bluff Ratepayers Group is a collection of ratepayers ("WBRG") that was granted intervenor status in the underlying administrative proceeding before the PUC. A copy of this pleading will be served by certified mail, return receipt requested, on John Bass, the individual representative for WBRG, at P.O. Box 37, Whitney, Texas 76692. A copy of this pleading will also be served by certified mail, return receipt requested, on the legal representative for WBRG, Joe Freeland, Mathews & Freeland, LLP, 8140 N. Mopac Expy, Suite 2-260, Austin, Texas 78759.

11. The Cliffs Utility Committee is a community of ratepayers ("TCUC") that was granted intervenor status in the underlying administrative proceeding before the PUC. A copy of this pleading will be served by certified mail, return receipt requested, on TCUC's individual representative, Byrom Smith, at 200 Oyster Bay, Graford, Texas 76449.

12. Pursuant to Texas Civil Practice and Remedies Code §30.004, a copy of this pleading will be served by certified mail, return receipt requested, on the Office of the Attorney General of Texas at P.O. Box 12548, Austin, Texas 78711.

IV. JURISDICTION AND VENUE

13. This Court has jurisdiction to hear this suit pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code and Texas Government Code §§2001.038 and 2001.171. Venue is mandatory in Travis County pursuant to Texas Government Code §2001.176(b)(1), and Texas Civil Practice and Remedies Code §§15.004 and 15.016.

V. INTRODUCTION

14. This suit seeks judicial review of and a declaratory judgment regarding the Final Order entered by the PUC in a contested retail utility rate proceeding under Texas Water Code, Chapter 13. The rate proceeding was initiated pursuant to applications filed in 2016 requesting water and sewer rate and tariff changes. DDU requested a $200,000 annual increase in revenue from about 1000 customers within two water and sewer systems. The PUC rejected DDU's requested increase and further reduced DDU's revenues by an additional $200.000 annually. The vast majority of this $400,000 annual reduction resulted from the PUC's decision to take DDU's property for public use without compensation by eliminating approximately $6.500,000 of system asset values in one of the systems. This taking lowered the calculated rates that DDU could charge and caused an annual reduction of approximately $300.000 in DDU's revenues.

15. DDU filed Applications ("Applications") with the PUC for a rate/tariff change under Certificate of Convenience and Necessity Nos. 12087 and 20705 for water and sewer utility service to The Cliffs and White Bluff resort/residential developments in Palo Pinto County and Hill County, respectively, in August of 2016.

VI. BACKGROUND FACTS

16. Pursuant to Texas Water Code §13.1872(c)(2). DDU opted to file the Applications as a Class B utility.[1] The PUC referred the Applications to hearing in September 2016. After 12 months of discovery, including DDU's production of over 17,000 pages of documents and responding to 200 requests for information from the parties, the hearing convened in late October 2017.

[1] A Class B utility provides retail service to customers. and has at least 500 or more taps or connections, but less than 10,000 taps or connections. Tex. Water Code §13.002(4-b).

17. The PUC issued its Final Order on August 30, 2018.[2] The Final Order recommended an estimated $200,620 reduction in DDU's revenue requirement for the White Bluff water and sewer systems and a $72,473 increase in DDU's revenue requirement for The Cliffs water and sewer systems. The PUC ordered its Staff to file the approved tariffs within 10 days of the date the Final Order was issued.

18. Both DDU and WBRG in the underlying administrative matter timely filed Motions for Rehearing at the PUC.[3] The PUC adopted an order extending the time to act upon the Motions for Rehearing on October 12, 2018 ("Extension Order"). The Extension Order extended the time for the PUC to act on the Motions for Rehearing to the maximum time allowed by law, thus extending the PUC's deadline to act until December 8, 2018 (100 days after the issuance of the Final Order[4]).

19. During an open meeting on October 25, 2018, the PUC directed the PUC Staff to prepare "number runs" and generate tariffs based upon the PUC discussion that day. This action was memorialized in a memo from PUC Counsel to a PUC Staff member that same day. The "number runs" and revised tariffs were filed with the PUC on October 31, 2018, as memorialized in a memo from PUC Staff to PUC Counsel that day.

20. PUC Chairman Walker issued a memorandum on the Motions for Rehearing on November 7, 2018, stating that her position was to grant both Motions for Rehearing in part and revise the Final Order to clarify certain provisions.[5] In an open meeting on November 8, 2018, the PUC voted to adopt Chairman Walker's position and grant in part both Motions for Rehearing

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2 A copy of the Final Order is attached hereto as Exhibit A and is incorporated by reference.

3 Texas Government Code §2001.146(a) requires that a motion for rehearing be filed by the 25th day after the date that the order that is the subject of the motion is signed. DDU's motion for rehearing was filed on September 24, 2018, and WBRG's motion for rehearing was filed on September 21, 2018.

4 Texas Government Code §2001.146(e).

5 A copy of Chairman Walker's memorandum is attached hereto as Exhibit B and is incorporated by reference.

and revise the Final Order. However, the PUC has yet to issue any order on rehearing, and DDU does not know when such an order may be issued. In order preserve its rights on appeal, DDU must initiate judicial review by filing a petition not later than the 30th day after the date the decision or order that is the subject of complaint is final and appealable. In the absence of action by the PUC to issue an Order on Rehearing and in an abundance of caution to preserve its right to appeal, DDU is filing this petition within the period prescribed in Section 2001.176(a) of the Texas Government Code. The Final Order remains the last action by the PUC. Assuming that the Motions for Rehearing were overruled by operation of law on December 8, 2018, a petition to initiate judicial review must be filed by January 7, 2018. This Petition is timely filed.

21. There are numerous errors related to the PUC's decision regarding the White Bluff water and sewer system rates that result in rates that are not in the public interest, are unreasonable and unjust, are based upon arbitrary and capricious findings and conclusions, and reflect an abuse of discretion by the PUC. These errors can be grouped into three basic categories: rate base related errors (Points of Error VIII.A – C); rate of return related errors (Point of Error VIII.D); and operation and maintenance expense related errors (Points of Error VIII.E – H).

VII. JUDICIAL REVIEW

22. Judicial review of the underlying administrative matter will be governed by the substantial evidence rule pursuant to Texas Water Code §13.381.

VIII. ISSUES PRESENTED/POINTS OF ERROR

A. The PUC erred in concluding that most of DDU's assets are developer contributions that must be deducted from rate base.

23. The United States and Texas Constitutions safeguard private property from government takings.[6] DDU has a legal obligation to provide service.[7] and is entitled to earn a return on its property that is used and useful in rendering service to the public.[8] The PUC's decision to exclude nearly all of DDU's investment in the White Bluff water and sewer systems is effectively a government taking of DDU's property through its regulatory process in violation of the Fifth Amendment to the United States Constitution[9] and Article I, Section 17, of the Texas Constitution.

24. There is not substantial evidence to support the PUC's finding that all funds expended and assets constructed for the White Bluff systems before December 30, 1996, and a majority of the assets constructed after December 30, 1996, are developer contributions that must be excluded from rate base. All the evidence supports the opposite finding and conclusion – that DDU's assets were funded by its owner and intended to earn a return on its investment on the amounts retained on the books of the utility.

25. Randy Gracy, President of DDU, testified that payments made by Double Diamond, Inc., DDU's predecessor, to contractors to build the collection and distribution lines at White Bluff would have been recorded in Double Diamond, Inc.'s books as 80% developer and 20% utility.[10] DDU's expert witness testified that DDU has been consistent in the treatment of 80% developer-

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6 United States Constitution, Fifth Amendment, and Texas Constitution, Art. I, § 17(a).

7 Water Certificate of Convenience and Necessity (CCN) No. 12087 and sewer CCN No. 20705.

8 Texas Water Code §13.183(a).

9 The United States Constitution applies to the State of Texas, and its agencies, through the Fourteenth Amendment to the Constitution.

10 Tr. at 65:13-66:12, 67:6-69:13 (Gracy Cross) (Oct. 24, 2017). All references herein are to the administrative record, with specific citation to the trial transcript or exhibits, as applicable.

contributed assets in previous applications for rate changes filed with the TCEQ.[11] DDU has shown through schedules attached to its federal tax returns and financial statements that it did not take advantage of federal income tax write-offs on its assets and that the portion of the assets intended as investment remain on DDU's books.[12]

26. Section 13.1871 of the Texas Water Code provides that:

> (d) ... If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the regulatory authority may disallow the nonsupported costs or expenses.
>
> (e) Except as provided by Subsection (f) or (g), if the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, it may be rejected and the effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided.

Instead of complying with these statutory requirements and rejecting the application, the PUC allowed DDU's application to proceed, at great expense,[13] and over a period of two years, as though DDU's application did comply with the PUC's rules and that DDU had "filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application." The statutory requirements only authorize the PUC to either reject the application or suspend the rates until a proper application is submitted. The PUC is not authorized to take any other action, but after the time period allowed for the PUC to disallow costs or expenses passed, the PUC sought to impose new requirements and arbitrarily disallow nearly $4,300,000 in DDU's rate base.

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[11] Ex. DDU-11, Rebuttal Testimony of Jay Joyce at 22:8-23:6 (Oct. 16, 2017).

[12] DDU Ex. 12, DDU Depreciation Schedule; WBRG-8, Confidential Exhibit - Response to WBRG 4-3, DDU16-016086, Excerpts from Double Diamond Financial Statements DDU003567-DDU003568, DDU003571-DDU003572, DDU003576-DDU003577, DDU003580, DDU003584, 2015 Depreciation and Amortization Report, DDU16-015470 to DDU16-015475.

[13] DDU's rate case expenses will be addressed in PUC Docket No. 47748, but currently amount to over $400,000.

27. In addition, the evidence in the administrative record does not support the PUC's conclusions and findings that the costs incurred by DDU, its subsidiaries, predecessors and/or affiliates, were intended to be contributions of cost-free capital. The PUC's decision is arbitrary, capricious, and an abuse of discretion. The final rates set by the PUC are unjust and unreasonable and not in the public interest because they deny DDU the opportunity to earn a reasonable return on its investment and recover its reasonable and necessary operating expenses.

28. Under the Texas Water Code, there are only two types of contributions that may have an impact on a utility's rate base: (1) customer contributions in aid of construction; and (2) developer or governmental entity contribution in aid of construction. Texas Water Code §13.185. Neither of these contributions apply in this case.

29. The Final Order imposes a new requirement and burden of proof on DDU to show that its assets are *contributed by the utility.* Nothing in the plain language of the Texas Water Code, Chapter 13, or the PUC rules requires such a showing or even explains what is meant by the PUC's use of the phrase "contributed by the utility."[14] The statute cited in the Final Order provides only:

> In any proceeding involving any proposed change of rates, the burden of proof shall be on the utility to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable.[15]

30. For the first time, the PUC imposed a new requirement on DDU that deviated from prior rules and practices without any prior notification or explanation of this change to DDU. The PUC's Final Order stated that the only way to meet this new post-hearing evidentiary requirement is to have offered canceled checks from DDU showing the payment for the asset.[16]

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[14] Final Order, Conclusion of Law 8, p. 32.
[15] Texas Water Code §13.184(c).
[16] Final Order, p. 10.

31. In *Oncor Elec. Delivery Co. v. Pub. Util. Comm'n of Tex.*, the utility challenged the PUC's order that imposed a new requirement on the utility to obtain prior authorization before certain rate case expenses from prior proceedings and outside the test year would be recoverable.[17] The court determined that *Oncor* had a right to know what is expected of it in the administrative process and held that the PUC acted arbitrarily and capriciously.[18]

32. As required by Texas Water Code §13.1871 and the *Oncor* case, DDU has a right to know what is expected of it in the administrative process and how to reconcile and account for its invested capital. The PUC's decision is arbitrary, capricious, an abuse of discretion, and violates DDU's due process rights. As a result, the final rates set by the PUC are unjust and unreasonable and not in the public interest.

B. The PUC erred in concluding that costs of grinder pump replacements during the test year should be capitalized based on erroneous findings that costs to purchase replacement grinder pumps are not operation and maintenance expenses.

33. There is not substantial evidence to support the PUC's conclusions related to treatment of grinder pump costs in the Final Order. DDU's engineering expert, Dr. Victoria Harkins, was the sole witness in the proceeding with any experience in the operation and maintenance of grinder pumps.[19] In fact, Dr. Harkins was the only witness at the administrative hearing with any experience designing and operating utility systems.[20] No other witnesses challenged her expert testimony that grinder pumps require constant repair and maintenance.[21] The Administrative Law Judge ("ALJ") recognized this fact in preparing the proposal for decision

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17 *Oncor Elec. Delivery Co. v. Pub. Util. Comm'n of Tex.*, 406 S.W.3d 253 (Tex. App. -Austin 2013, no writ).
18 *Id.* at 272.
19 Tr. at 484:6-7 (Harkins Direct) (Oct. 26, 2017).
20 Tr. at 343:16-344:10 (Sears Cross) (Oct. 25, 2017); Tr. at 304:23-306 3 (Mathis Cross) (Oct. 25, 2017).
21 Tr. at 484:6-485:12 (Harkins Direct) (Oct. 26, 2017).

that was issued on February 13, 2018 (the "Proposal for Decision") and recommended that the grinder pump costs be expensed.[22]

34. The PUC failed to justify its deviation from the Proposal for Decision as required by Tex. Gov't Code Ann. §2003.049. There is no substantial evidence in the record to support the PUC's findings and conclusions on this issue.

35. And, as discussed above, §13.1871 of the Texas Water Code required the PUC to evaluate the sufficiency of DDU's application and supporting documentation with regard to the PUC's rules well before the administrative hearing commenced.[23] The statutory requirements only authorize the PUC to either reject the application or suspend the rates until a proper application is submitted. The PUC is not authorized to take any other action, and to determine after that fact that DDU's documentation was insufficient violates the PUC's statutory mandate.

36. The PUC's decision is arbitrary, capricious and an abuse of discretion. The final rates set by the PUC are unjust and unreasonable and not in the public interest because they do not include the grinder pump costs as expenses.

C. The PUC erred in setting rates that were based upon rate base that excluded the amounts of grinder pump replacements during the test year and amounts of grinder pump replacements during prior years.

37. Even if the grinder pump costs are not expensed, the PUC erred in calculating the revenue requirement because the PUC failed to include its recommended capitalized portions of the grinder pump costs in the rate base upon which DDU may earn return and recover depreciation expense. The PUC's decision is arbitrary, capricious and an abuse of discretion. The final rates set by the PUC are unjust and unreasonable and not in the public interest because they simply exclude these grinder pump costs from the rate calculation entirely.

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[22] Proposal for Decision, p. 16.
[23] Texas Water Code §13.1871(d) and (e).

38. Following the PUC's findings and conclusions on this issue, the costs to purchase replacement grinder pumps must be included in rate base for all replacement grinder pumps installed in prior years also. However, the final rates set by the PUC exclude those costs, which the PUC asserts should be capitalized from the test year. The PUC's decision is arbitrary, capricious, an abuse of discretion, and a violation of its statutory mandate. The final rates set by the PUC are unjust and unreasonable and not in the public interest because they exclude those prior year grinder pump costs from rate base.

D. The PUC erred in concluding that the rate of return on equity should be 8.79%.

39. The PUC ignored both DDU's expert, Greg Scheig, and the Proposal for Decision on these issues and based its findings solely on Staff testimony in the underlying matter. The PUC failed to justify its deviation from the Proposal for Decision as required by Texas Government Code §2003.049 because there was no credible evidence in the record to support its finding and conclusions.

40. There are two United States Supreme Court rulings that are oft-cited as establishing the legal criteria for determining a fair rate of return for regulated industries such as utilities: *Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia*[24] and *Federal Power Comm'n v. Hope Natural Gas Co.*[25] In *Bluefield*, the United States Supreme Court stated:

> A public utility is entitled to such rates as will permit it to earn a return on the value of property which it employs for the convenience of the public equal to that general being made ... on investments in other business undertakings *which are attended by corresponding risks and uncertainties*.[26] (emphasis added)

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[24] *Bluefield Water Works and Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923).
[25] *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).
[26] *Bluefield* at 692.

41. In the *Hope* decision, the United States Supreme Court broadened the concept of a reasonable return to allow for increasing national competition for capital:

> From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. *By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks*.[27] (emphasis added)

42. The Proposal for Decision recommended that the PUC approve a 9.84% return on equity ("ROE").[28] DDU presented evidence that its ROE should have been 11.50%.[29] The recommended ROE in the Proposal for Decision excluded an adjustment for a "small stock risk premium" ("SSRP") and violates the principles of the *Hope* and *Bluefield* cases.

43. Additionally, the Staff witness' analyses had mathematical errors and did not adequately account for the risk of an illiquid common stock equity investment in a small private company such as DDU as required by *Hope* and *Bluefield*.[30] The PUC's decision to rely on only two limited and incorrect analyses, excluding other recognized financial models, results in a return on equity that does not adequately compensate DDU's equity investors for the risk of an illiquid common stock equity investment in DDU, a small private company,[31] and violates the US Supreme Court precedent established by *Hope* and *Bluefield*.[32]

44. And once again, §13.1871 of the Texas Water Code required the PUC to evaluate the sufficiency of DDU's application and supporting documentation with regard to the PUC's rules well before the hearing commenced. The statutory requirements only authorize the PUC to either reject the application or suspend the rates until a proper application is submitted. The PUC is not

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27 *Hope* at 603.
28 Proposal for Decision, p. 66.
29 Ex. DDU-10, page 32 of 123, lines 19-22.
30 *Id.* at 6 of 123, lines 2-4.
31 *Id.* at 7 of 123, lines 6-9.
32 *Id.* at 6 of 123, lines 2-4.

authorized to take any other action, and to determine after that fact that DDU's proposed rate of return on equity was inappropriate violates the PUC's statutory mandate to set just and reasonable rates and the statutory requirements imposed by §13.1871.

45. The PUC's failure to appropriately address the ROE issues resulted in the PUC violating the requirements in the holdings of *Hope* and *Bluefield*. The PUC's Final Order excluded returns calculated at an appropriate rate. Consequently, the PUC's decision is arbitrary, capricious, an abuse of discretion, and the final rates set by the PUC are unjust and unreasonable and not in the public interest because the rate will not permit DDU "to earn a return on the value of property which it employs for the convenience of the public equal to that generally being made ... on investments in other business undertakings *which are attended by corresponding risks and uncertainties*.[33] (emphasis added).

E. The PUC erred in finding that the labor costs associated with two DDU employees were not reasonable and necessary and should be excluded from operations and maintenance expense.

46. Once again, the PUC determined after the fact that the documentation in DDU's applications was insufficient and thereby violated Section 13.1871 of the Texas Water Code.

47. DDU presented evidence in the underlying case to show costs for the two employees at issue as well as testimony that the two employees work on the White Bluff utility systems.[34] There is no substantial evidence to the contrary. The PUC's Final Order cites to the Staff's position that:

> Because Double Diamond Utilities did not provided [sic] any supporting documentation detailing what these other duties include, PUC Staff recommended removing these salaries from employee labor because the

[33] *Bluefield* at 692.

[34] DDU Ex. 3, Direct Testimony of Randy Gracy at 15:3-8 (Aug. 4, 2017); DDU Ex. 3-E, Tap Expense Calculations, at page 27 of 27 (Aug. 4, 2017); DDU Ex. 8, Rebuttal Testimony of Randy Gracy at 4:14-5:4 (Oct. 16, 2017); Staff Ex. 2A, Workpapers of Emily Sears, at ES Workpaper 5 (Sept. 22, 2017).

> other duties job description is too vague to determine whether the salaries are reasonable and necessary expenses.[35]

The PUC then stated that:

> Double Diamond Utilities did not provided [sic] any documentation explaining or detailing what these other duties include. In addition, Double Diamond Utilities presented no evidence on whether any of these other duties required skill operating a backhoe, why Double Diamond Utilities needs more than one full-time backhoe operator, the market-salary rate for a backhoe and equipment operator, or the experience and skill level of these employees.[36]

This is the PUC's only justification for changing the recommendation of the ALJ in its Final Order.

48. Neither the Texas Water Code nor the PUC's Rules contain a requirement or standard for justification of employee labor expenses.[37] Further, there is no PUC guidance related to this "standard" cited by the PUC in its Final Order. Neither the PUC Application form nor its instructions provide any guidance, and the PUC Staff did not ask any questions in discovery for the types of evidence now cited by the PUC as justification for denying DDU's costs.

49. The only evidence in the record is that the two employees work for the White Bluff water and sewer systems and that a very limited amount of their time is spent installing taps.[38] There is no substantial evidence to suggest anything to the contrary.

50. As required by Texas Water Code §13.1871 and the *Oncor* case, DDU has a right to know what is expected of it in the administrative process and how to justify its operating expenses. The Final Order imposes a new requirement and burden of proof on DDU. The PUC's decision is arbitrary, capricious, an abuse of discretion, and a violation of its statutory mandate.

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35 Final Order, p. 3.

36 *Id* at pages 3-4.

37 Texas Water Code Chapter 13 and PUC Substantive Rules Chapter 24.

38 DDU Ex. 3, Direct Testimony of Randy Gracy at 15:3-8 (Aug. 4, 2017); DDU Ex. 3-E, Tap Expense Calculations, at page 27 of 27 (Aug. 4, 2017); DDU Ex. 8, Rebuttal Testimony of Randy Gracy at 4:14-5:4 (Oct. 16, 2017); Staff Ex. 2A, Workpapers of Emily Sears, at ES Workpaper 5 (Sept. 22, 2017).

The final rates set by the PUC are unjust and unreasonable and not in the public interest because the rates exclude these labor costs.

F. The PUC erred in concluding that the costs associated with an application to amend a certificate of convenience and necessity should be excluded from the operation and maintenance expenses in the revenue requirement because it is not a recurring expense.

51. The PUC erred in excluding the costs associated with DDU's application to amend its CCN. The PUC adopted its Staff's recommendation to remove $2,907 in costs for a CCN application related to The Cliffs. While DDU agrees with reclassifying these costs as an expense for The Cliffs and not White Bluff, DDU does not agree with complete removal of the costs.

52. Investor owned utilities are required to obtain a certificate of convenience and necessity in order to operate legally in Texas.[39] DDU must incur CCN application costs in order to do business. The PUC's decision that this cost should not be recovered is unreasonable and unjust. The PUC found that the CCN cost was not a "recurring expense."[40]

53. The PUC is required to "permit the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses..."[41] There is no requirement in the Texas Water Code or in the PUC's rules related to "recurring expense." The only requirement is that the expense be reasonable and necessary and occur within the test year.[42] DDU's expense for its CCN amendment was reasonable and necessary and was incurred during the test year as discussed in the Proposal for Decision. There was more than sufficient evidence in the record to support the ALJ's findings on this issue, and the PUC erred in issuing a Final Order to the contrary.

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39 Texas Water Code §13.242.
40 Final Order, p. 5.
41 Texas Water Code §13.183(a)(1).
42 Texas Water Code §13.185(d).

54. The PUC once again imposed a new requirement on DDU that resulted in excluding reasonable and necessary expenses. At a minimum, DDU's costs should have been amortized over a period of time, i.e. the same three-year period used for amortizing wastewater permit costs.

55. As required by Texas Water Code §13.1871 and the *Oncor* case, DDU had a right to know what was expected of it in the administrative process and how to justify its operating expenses. The Final Order imposed a new requirement and burden of proof on DDU. The PUC's decision is arbitrary, capricious, an abuse of discretion, and a violation of its statutory mandate, and the final rates set by the PUC are unjust and unreasonable and not in the public interest because they exclude the CCN costs.

G. The PUC erred in concluding that the costs associated with overhead for use of facilities located at the White Bluff and The Cliffs resorts should be excluded from the operation and maintenance expenses in the revenue requirement because there is no substantial evidence to support the reasonableness of the allocation.

56. The PUC erred in excluding the costs associated with DDU's overhead. The PUC adopted its Staff's recommendation in post-hearing briefing that DDU's requested resort overhead allocation should be removed.[43] The PUC found that DDU's allocation of costs was unsupported by any evidence in the record.

57. The record demonstrated that the costs are reasonable and necessary and not affiliated transactions. Mr. Gracy testified at length about how the expense allocations were developed based upon historical costs.[44] He also testified that the 3% allocation was a weighted average with some costs appropriately allocated to the utility being more than 3% and some being less.[45] The overall impact was the allocation of 3% of resort overhead, or $12,000/year, was reasonable for the services that the utility received from the resort.

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[43] Final Order, p. 6.
[44] Tr. 474:4 through 477:2 (Gracy Cross) (Oct. 26, 2017).
[45] Tr. 476:23 through 477:2 (Gracy Cross) (Oct. 26, 2017).

58. The ALJ properly addressed the issue of affiliated costs by determining that "[i]t appears from the evidence that these are costs incurred by the resort, 3% of which are then expensed to DDU, and the ALJ finds no support in the statute for an argument that this allocation would constitute a payment for such costs."[46] The ALJ also found that the "contention assumes that the alleged payments are made to an 'affiliated interest' as defined by Texas Water Code §13.002(2), but [the protestant] cites to no evidence proving that payments were made to a corporation meeting the statutory definition."[47] The Final Order provides no justification for modifying the ALJ's decision.

59. In fact, the issue of affiliated costs was first raised by WBRG and PUC Staff in post-hearing briefing and after the hearing had concluded. If this was to be an issue, the PUC was required to raise it with DDU within a reasonable time after the application was filed by DDU. DDU had no notice of this post-hearing change in position and new evidentiary requirement. The PUC again imposed a new evidentiary requirement without notice to DDU, which is prohibited by law.

60. As required by Texas Water Code §13.1871 and the *Oncor* case, DDU has a right to know what is expected of it in the administrative process and how to justify its operating expenses. The Final Order imposed a new requirement and burden of proof on DDU. The PUC's decision is arbitrary, capricious, an abuse of discretion, and a violation of its statutory mandate. The final rates set by the PUC are unjust and unreasonable and not in the public interest because the rates exclude these reasonable and necessary expenses.

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[46] Proposal for Decision, p. 26.
[47] *Id.*

H. The PUC erred in concluding that the depreciation expense for assets identified in the trending study should be excluded from operation and maintenance expense even though the trending study was found to reasonable and the assets found to be used and useful.

61. The PUC erred in excluding the value of assets identified in the trending study,[48] which it concluded was reasonable, from the depreciation to which DDU is entitled.[49] This resulted in an error of over $46,000 for the White Bluff revenue requirement and over $24,000 for The Cliffs revenue requirement. Exclusion of these depreciation expenses also conflicts with Conclusion of Law 8B. which specifically states that DDU "is permitted to recover a depreciation expense on its used and useful developer-contributed assets at White Bluff in accordance with Texas Water Code §13.185(j)."

62. Consequently, the PUC's decision is arbitrary. capricious. an abuse of discretion, and a violation of its statutory mandate, and the final rates set by the PUC are unjust and unreasonable and not in the public interest because they do not permit DDU to recover depreciation expense on its used and useful assets in accordance with Texas Water Code § 13.185(j).

IX. REQUEST FOR DECLARATORY RELIEF

63. To the extent it is not duplicative of the relief granted pursuant to DDU's issues for review/points of error, or as necessary should the Court determine that DDU is not entitled to judicial review, DDU brings a claim for declaratory relief pursuant to Texas Civil Practice and Remedies Code §37.004 and Texas Government Code §2001.038.

64. DDU alleges and incorporates all preceding paragraphs by reference in this request for declaratory relief.

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[48] Under the PUC rules found in 16 TAC 24.41(c)(2)(B)(i). trending studies may be used to estimate the value of assets that have no historical records for verification purposes in order to adjust rate base or the rate of return on equity.

[49] Final Order, Findings of Fact 59 through 67.

65. Specifically, DDU requests that the Court rule or declare that Texas Water Code §13.1871 and the corresponding rule, 16 Texas Administrative Code §24.8, require the PUC to either accept an application as sufficient or to reject the application and suspend the rates until a proper application is submitted. Essentially, the PUC is required to provide DDU with notice of the types of documentation and evidence it will require at an evidentiary hearing and that making additions or deletions to the required documentation after the application is accepted by the PUC as sufficient violates the law and the administrative rule and places an undue burden on a utility.

X. CONDITIONS PRECEDENT

66. All conditions precedent to this appeal and request for declaratory relief have been performed or have occurred.

XI. REQUEST FOR RECORD

67. In accordance with Texas Government Code §2001.175(c), DDU requests that the PUC send to this Court an original or certified copy of the entire record of the underlying administrative proceeding.

XII. PRAYER

WHEREFORE, Appellant Double Diamond Utilities Company, Inc. prays for the following:

a. All Appellees be cited to appear and answer;

b. Upon final trial, the Court vacate the PUC's Final Order and remand the case to the PUC for further proceedings consistent with the ruling of this Court;

c. Rule or declare that Texas Water Code §13.1871 and 16 Texas Administrative Code §24.8 require the PUC to either accept an application as sufficient or to reject the application and suspend the rates until a proper application is

submitted, require the PUC to provide DDU with notice of the types of documentation and evidence it will require at an evidentiary hearing, and that making additions or deletions to the required documentation after the application is accepted by the PUC violates the law and administrative rule and places an undue burden on a utility;

d. Conclude the PUC made erroneous evidentiary findings and/or conclusions that render the Final Order arbitrary and capricious;

e. And for such other and further relief, general or special, at law or in equity, to which DDU may show itself justly entitled.

Respectfully submitted,

By: /s/ Kelli A. N. Carlton

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

2018 [illegible] PM 4:28

APPLICATION OF DOUBLE DIAMOND UTILITY COMPANY, INC. FOR A RATE/TARIFF CHANGE	**§**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER

This Order addresses Double Diamond Utilities Company, Inc.'s application to increase rates for water and sewer service provided to two resort developments owned by its affiliates, The Cliffs in Palo Pinto County, and White Bluff in Hill County. Double Diamond Utilities filed two rate-filing packages, one for its White Bluff system and one for its system at The Cliffs; each package includes a rate increase for water and sewer tariffs. Double Diamond Utilities requested revenue requirements of $568,368 for the White Bluff water system, $572,068 for the White Bluff sewer system, $421,488 for The Cliffs water system, and $313,686 for The Cliffs sewer system, each based on a 2015 calendar year test year.

The State Office of Administrative Hearings (SOAH) administrative law judge (ALJ), after conducting a hearing, issued a proposal for decision recommending a revenue requirement of $375,150 for the White Bluff water system, $349,074 for the White Bluff sewer system, $383,758 for The Cliffs water system, and $319,791 for The Cliffs sewer system, based on adjustments to expenses, rate base, depreciation, and return on invested capital.

The Commission agrees with the majority of the ALJ's determinations in the proposal for decision. However, the Commission disagrees with and rejects the ALJ's conclusions regarding Double Diamond Utilities' employee labor expense, other plant maintenance expense, professional services expense, miscellaneous expense, and return on equity. The Commission's decisions result in a revenue requirement of $384,197 for the White Bluff water system, $270,916 for the White Bluff sewer system, $358,088 for The Cliffs water system, and $296,018 for The Cliffs sewer system.

Except as discussed in this Order, the Commission adopts the proposal for decision, including findings of fact and conclusions of law.

Exhibit A

I. Discussion

A. Allocation of Employee Salaries

Double Diamond Utilities requested a total of $171,960 in employee labor expenses for its White Bluff water and sewer systems. This amount reflects the test-year salaries for seven employees. The salaries of two employees were challenged by Commission Staff and are discussed in subsection B. For the remaining employee salaries, Commission Staff challenged the allocation of employee salaries between the White Bluff water and sewer systems.

With one exception, the salaries of the employees are allocated evenly between water and sewer systems, which resulted in expense amounts of $80,520 for water and $91,440 for sewer. Double Diamond Utilities stated it allocated the employee salaries in this manner because all employees are cross-trained in both water and sewer operations and work seamlessly between the water and sewer systems.[1]

The ALJ concluded that Double Diamond Utilities met its burden to show that the allocation of salaries is reasonable because employees are trained on both systems and work on both systems.[2]

The Commission disagrees with the ALJ's conclusion that Double Diamond Utilities met its burden to show that its allocation of employee salaries is reasonable. Double Diamond Utilities did not provide any evidence on the amount of time each employee spends working on each system or even which system the employee worked on. The fact that all employees are cross-trained to work on both utilities does not mean that each employee worked on both utilities, or if they did, that their time was split evenly between the two systems. Given the absence of actual time records for the employees, the better approach in this proceeding is to allocate the employee salaries based on the type of license held by each employee. However, this approach is not the Commission's preferred approach when tasked with determining the appropriate allocation of employee salaries between systems. Rather, the Commission would prefer to allocate salaries based on accurate timekeeping records that demonstrate the amount of time an employee actually worked on a particular system.

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[1] Double Diamond Utilities Ex. 8, Rebuttal Testimony of Randy Gracy at 4:14 – 5:1 (Oct. 16, 2017).

[2] PFD at 9.

Exhibit A

To reflect its decision on this issue, the Commission deletes findings of fact 22 and 25 and adds new findings of fact 26A through 26C.

B. Salaries of Mr. Whitworth and Mr. Keeton

Double Diamond Utilities' requested employee labor expenses for its White Bluff systems included $20,800 for the salary of Jerry Whitworth and $22,880 for the salary of Danny Keeton. According to Double Diamond Utilities, Mr. Whitworth and Mr. Keeton are backhoe operators that are involved in all tap installations, excavation for installing taps, clean-up of the work site after the installations, and also perform other duties as needed within the utility department.[3]

Commission Staff argued that the salaries of employees Mr. Whitworth and Mr. Keeton. Commission Staff should be excluded because the work orders provided by Double Diamond Utilities show that Mr. Whitworth and Mr. Keeton spend only 1% of their time installing taps, leaving 99% of their time unaccounted for as *other duties*. Because Double Diamond Utilities did not provided any supporting documentation detailing what these other duties include, Commission Staff recommended removing these salaries from employee labor because the other duties job description is too vague to determine whether the salaries are reasonable and necessary expenses.

The ALJ concluded that Double Diamond Utilities met its burden to show that Mr. Whitworth's and Mr. Keeton's salaries are reasonable and necessary expenses because they worked on and answered service calls related to both systems.[4] However, the ALJ also concluded that evidence provided gives no explanation of what that work was, how long it took, or what any of the service calls involved.[5]

The Commission disagrees with the ALJ's determination regarding the salaries of Mr. Whitworth and Mr. Keeton. Double Diamond Utilities has the burden to show that the salaries for the positions held by Mr. Whitworth and Mr. Keeton are a reasonable and necessary expense. The record reflects that Mr. Whitworth and Mr. Keeton only spent a small time installing taps and spent their other remaining time performing other duties as needed. Double Diamond Utilities did not provided any documentation explaining or detailing what these other duties include. In addition,

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[3] Rebuttal Testimony of Randy Gracy 4:17–19 (Oct. 16, 2017); *see also* Commission Staff Ex. 2A, Workpapers of Emily Sears, at ES Workpaper 4 (Sept. 22, 2017).

[4] PFD at 8–9.

[5] *Id.*

Exhibit A

Double Diamond Utilities presented no evidence on whether any of these other duties required skill operating a backhoe, why Double Diamond Utilities needs more than one full-time backhoe operator, the market-salary rate for a backhoe and equipment operator, or the experience and skill level of these employees.

Further, the Commission notes that even the ALJ describes the evidence in the record supporting how Mr. Whitworth and Mr. Keeton spend 99% of their time as "scant and non-specific."[6] Thus, removing the salaries of Mr. Whitworth and Mr. Keeton from Double Diamond Utilities' cost of service is warranted because Double Diamond Utilities has not shown that the salaries related to the positions held by these employees are reasonable and necessary to provide service to ratepayers.

To reflect its decision on this issue, the Commission deletes finding of fact 23, modifies findings of fact 24 and 26, and adds new findings of fact 26D through 26F.

C. Other Plant Maintenance Expenses

Double Diamond Utilities requested a total of $142,010 in expenses for other plant maintenance at its White Bluff systems. This total included a request of $79,590.73 for grinder-pump expenses for the White Bluff sewer system.

Double Diamond Utilities asserted that it treats costs related to grinder pumps as recurring annual expenses because these costs recur from year-to-year and are a constant maintenance issue in the operation of the White Bluff sewer system. In support of its position, Double Diamond Utilities provided the testimony of Dr. Victoria Harkins. She testified that each year twenty to thirty grinder pumps are replaced and approximately half of its grinder pumps are repaired, and concluded that the costs should be treated as recurring annual expenses.[7] In response to Double Diamond Utilities, Commission Staff argued that Double Diamond Utilities should reclassify all of its grinder-pump expenses as capitalized assets because grinder pumps have a service life of more than one year.

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[6] PFD at 8.
[7] Tr. 484:12–488:25 (Harkins Direct) (Oct. 26, 2017).

The ALJ determined that Double Diamond Utilities' treatment of grinder pump costs as recurring annual expenses is appropriate because these costs are incurred on an annual basis by Double Diamond Utilities to repair and replace the pumps in the White Bluff sewer system.[8]

The Commission disagrees with the ALJ's determination. Instead, the Commission concludes that for White Bluff sewer, Double Diamond Utilities should expense all test-year costs incurred to repair grinder pumps and capitalize all test-year costs to purchase replacement grinder pumps. This approach ensures that the cost of all grinder pumps used to make normal and routine repairs to the utility system are expensed, while the actual replacement of grinder pumps are capitalized in accordance with accounting standards regarding the installation of plant in service.

To reflect its decision on this issue, the Commission deletes findings of fact 39 and 41, modifies finding of fact 37, and adds new finding of fact 38A.

D. Professional Services

Double Diamond Utilities requested professional-services expenses of $2,907 for obtaining its CCN amendment to provide sewer service at The Cliffs. Although the ALJ noted that a CCN amendment is not a recurring expense, the ALJ concluded that the cost associated with the CCN amendment is reasonable and necessary to provide sewer service to customers at The Cliffs, and recommended that these expenses be recovered through a rate rider.

The Commission disagrees with the ALJ's conclusion to allow recovery of the cost of the CCN amendment for The Cliffs system. The Commission finds that costs associated with CCN amendments are not recurring expenses and should not be included in the utility's revenue requirement such that this amount is recovered from ratepayers on a recurring basis.

To reflect its decision on this issue, the Commission deletes findings of fact 45 and 46 and adds new finding of fact 46A.

E. Miscellaneous Expenses

Double Diamond Utilities requested total miscellaneous expenses of $55,685 for its White Bluff systems and $41,113 for its systems at The Cliffs. These requested amounts include expenses incurred by Double Diamond Utilities for resort overhead expenses billed from the White Bluff and The Cliffs resorts to the water and sewer systems at White Bluff and The Cliffs. Double

[8] PFD at 16–17.

Diamond Utilities explained that because the utility offices are located within the resorts' administrative buildings, the utility uses some of the resorts' resources, and is then billed by the resorts for the resources used.[9] The utility systems are billed a total of 3% of all overhead and general and administrative expenses incurred by each resort. The expenses billed by the resorts to the utility systems include expenses related to the general manager and office manager at the resorts, employee compensation (including commissions and bonuses), payroll expenses, electricity, water and sewer, office space, phones, computers, copiers, uniforms, and small tools.

The ALJ concluded that the resort overhead expenses billed to Double Diamond Utilities' water and sewer systems at White Bluff and The Cliffs are reasonable and necessary to furnish service to Double Diamond Utilities' customers.[10] The ALJ reasoned that although there are costs that appear in both Double Diamond Utilities' cost of service and the resort budget, a 3% portion of the resorts' total overhead expenses is reasonable because Double Diamond Utilities is saving money on office space, supplies, and employees through the assignment of these overhead costs.

The Commission disagrees with the ALJ's recommendation and instead adopts Commission Staff's recommended disallowances of $8,380 for water and $6,068 for sewer from White Bluff's requested miscellaneous expenses, and $20,075 for water and $18,270 for sewer from The Cliffs requested miscellaneous expenses.[11] The Commission finds that the evidence in the record shows that the amount of resort overhead expenses billed to White Bluff systems and The Cliffs systems includes the cost of items unrelated to the provision of utility service. The amounts billed to Double Diamond Utilities are not based on the Double Diamond Utilities' share of resort expenses that it directly uses; instead, it is an across-the-board charge of 3% of all overhead and general and administrative expenses incurred by the resort. Thus, a reduction in Double Diamond Utilities' requested expense is warranted.

The Commission further concludes that expenses paid by Double Diamond Utilities to the resorts are an affiliate transaction under Texas Water Code (TWC) § 13.185(e).[12] The entities that own and operate the resorts are wholly-owned subsidiaries of Double Diamond-Delaware, Inc.,

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[9] Tr. at 329:25–330:6 (Sears Cross) (Oct. 25, 2017); Rebuttal Testimony of Randy Gracy at 8:12–9:2 (Oct. 16, 2017); Tr. at 474:4–475:6 (Gracy Cross Rebuttal) (Oct. 26, 2017).

[10] PFD at 25.

[11] Commission Staff Ex. 2, Direct Testimony of Emily Sears at 9:11–10:2 (Sept. 22, 2017).

[12] TWC § 13.185(e)

and qualify as an affiliate under TWC § 13.002(2). Thus, expenses paid from Double Diamond Utilities to the resorts are an affiliate payment under TWC § 13.185(e). TWC § 13.185(e) requires that the Commission find that the price to the utility is no higher than prices charged by the affiliate to others for the same item or class of items to others. No evidence was admitted showing what other entities or persons would pay the resorts for the same class of comparable amenities. Further, there is no evidence to establish the market price for the same class of items provided to the systems. Without these findings, the Commission may not allow Double Diamond Utilities to recover these expenses.

To reflect its decision on this issue, the Commission modifies finding of fact 60, deletes findings of fact 61 through 65, finding of fact 67, conclusion of law 6, and adds new findings of fact 66A through 66D and new conclusions of law 6A through 6E.

F. Federal Income Tax Expense

After the issuance of the proposal for decision, Commission Staff recommended that the rates ultimately adopted by the Commission for Double Diamond Utilities reflect a lower tax expense resulting from the change in the federal income tax rate as a result of the Tax Cuts and Jobs Act of 2017.[13] The Commission's accounting order in Project No. 47945 directed Commission Staff to review each investor-owned utility in Texas, on a case-by-case basis, to determine the appropriate mechanism to adjust its rates to reflect the changes to the federal tax rate.[14] Double Diamond Utilities agreed with Commission Staff's recommendations regarding the effects of the change in the federal income tax rate.[15] In its correction letter filed on May 2, 2018, the ALJ stated that the Commission should adopt Commission Staff's recommendations.[16]

The White Bluff and The Cliffs water and sewer systems are owned and operated by Double Diamond Utilities.[17] Double Diamond Utilities is a subchapter S corporation,[18] which is a pass-through entity for purposes of federal income taxes.[19] Double Diamond-Delaware, Inc.,

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[13] Commission Staff's Exceptions to the Proposal for Decision at 10–11 (Mar. 28, 2018).

[14] *Proceeding to Investigate and Address the Effects of Tax Cuts and Jobs Act of 2017 on the Rates of Texas Investor-Owned Utility Companies*, Project No. 47945, Amended Order Related to Changes in Federal Income Tax Rates at 1 (Feb. 15, 2018).

[15] Double Diamond Utilities' Responses to Exceptions to the Proposal for Decision at 12 (Apr. 12, 2018).

[16] Letter from Administrative Law Judge Casey Bell, State Office of Administrative Hearings to Stephen Journeay, Commission Counsel, Public Utility Commission of Texas (May 2, 2018) (filed in the docket).

[17] Direct Testimony of Randy Gracy at 6:15–21 (Aug. 4, 2017).

[18] *See* 26 U.S.C. § 1361.

[19] Direct Testimony of Debi Loockerman at 3:15–4:2 (Sept. 22, 2017).

also a subchapter S corporation, is the parent company and sole shareholder of Double Diamond Utilities.[20] R. Mike Ward is the majority shareholder of Double Diamond-Delaware, owner of 94.8% of the shares, with an employee stock ownership plan owning 5.2%.[21] Because Double Diamond-Delaware is also a pass-through entity, it is likely that the majority of tax expenses of Double Diamond Utilities are paid at the individual level by Mr. Ward, the majority shareholder of Double Diamond-Delaware. However, the record does not reflect what amount of Double Diamond Utilities' tax expense is paid by Mike Ward or the applicable tax rate.

In *Suburban Utility Corporation v. Public Utility Commission of Texas*,[22] the Texas Supreme Court held that Suburban Utility, a subchapter S corporation, "is entitled to a reasonable cost of service allowance for federal income taxes actually paid by its shareholders on [the utility's] taxable income or for taxes it would be required to pay as a conventional corporation, whichever is less."[23] In setting rates, the Commission has considerable discretion to determine the appropriate method and amount of income-tax expense because "[t]he income tax calculation is no different than other elements of utility ratemaking."[24]

The Commission notes that recent changes to federal income tax law have reduced the income tax rate for corporations from 35% to 21%.[25] Therefore, the Commission concludes that it is reasonable to calculate Double Diamond Utilities' tax expense as if it were a C corporation with a federal income tax rate of 21% for ratemaking purposes. This treatment will provide Double Diamond Utilities a reasonable amount for federal income tax expense.

To reflect its decision on this issue, the Commission adds new findings of fact 79A through 79H and corresponding ordering paragraphs.

G. Invested Capital

The Commission must set a rate that will permit a utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over

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[20] *Id.* at Attachment 8, Double Diamond Utilities' Response to Response to Staff RFI 1-34.
[21] Direct Testimony of Nelisa Heddin at 11:3–6 (Sept. 8, 2017).
[22] *Suburban Util. Corp. v. Pub. Util. Comm'n*, 652 S.W.2d 358 (Tex. 1983).
[23] 652 S.W.2d at 364.
[24] *Pub. Util. Comm'n v. GTE Sw. Inc.*, 901 S.W.2d 401, 409–411 (Tex. 1995).
[25] Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017). An Act to provide for reconciliation pursuant to titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018.

Exhibit A

and above its reasonable and necessary operating expenses.[26] Double Diamond Utilities' invested capital (rate base) has never been established or approved by TCEQ or the Commission because prior cases were settled and no such determinations were made. Thus, the Commission must determine the invested capital of Double Diamond Utilities in accordance with TWC § 13.185 and Commission rules. Under Commission rules, all contributions in aid of construction, developer contributions, and other sources of cost-free capital must be deducted from rate base.[27]

Double Diamond-Delaware began construction of the White Bluff resort in 1990 and began construction of the utility systems at White Bluff in 1990 or 1991.[28] Double Diamond Utilities, the applicant in this proceeding, did not exist until December 1996. Until December 1996, Double Diamond, Inc., a wholly-owned subsidiary of Double Diamond-Delaware, was both the developer and the utility company at White Bluff, and contracted for the construction of the original infrastructure of the utility systems.

After Double Diamond Utilities was created in December 1996, also as a wholly-owned subsidiary of Double Diamond-Delaware, Double Diamond Utilities claims that the original utility infrastructure and other assets existing at that time were "transferred in some form or fashion from Double Diamond, Inc. to [Double Diamond Utilities]."[29] However, there is no evidence in the record to corroborate this assertion. The record also reflects that the majority of assets installed after the creation of Double Diamond Utilities in December 1996 were paid for by Double Diamond Properties Construction Co., another wholly-owned subsidiary of Double Diamond-Delaware.[30]

Despite the fact that Double Diamond Utilities did not exist until 1996, Double Diamond Utilities initially filed an application stating that all of its investment in the White Bluff water and sewer systems is used and useful, and therefore the appropriate amount of developer contributions is zero.[31] However, Double Diamond Utilities later agreed to reclassify 80% of the costs of its assets as paid by the developer and 20% as paid by the utility in accordance with company

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[26] TWC § 13.183(a)(1).
[27] 16 TAC § 24.31(c)(2)(B)(v); 16 TAC § 24.31 (c)(3).
[28] Direct Testimony of Randy Gracy at 7:13, 23; 10:17 (Aug. 4, 2017).
[29] Tr. at 57:10–12 (Gracy Cross) (Oct. 24, 2017).
[30] Direct Testimony of Nelisa Heddin at 18:11–19:10 (Sept. 8, 2017).
[31] *See* Application at 12:13-15; *see also* Double Diamond Utilities Initial Brief at 21 (Nov. 22, 2017);

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practice.[32] Double Diamond witness Gracy testified that Double Diamond has been allocating costs in this manner since 1990 or 1991.[33] Mr. Gracy stated that Double Diamond has applied the 80% developer and 20% utility split to all capital investments in the systems, including those in the initial infrastructure until 2008, when the infrastructure for the systems was finally completed. At that point, it was decided that all future capital investments would be 100% funded by the utility.[34] However, he admitted that he could not find any documentation reflecting any of these assertions.[35]

The ALJ determined that Double Diamond Utilities did not meet its burden to show that its proposed split was appropriate or supported by the record evidence. The ALJ further concluded that Double Diamond Utilities failed to show what amount of the original cost of utility assets included in its proposed rate base for White Bluff were contributed by the utility.[36] Accordingly, the ALJ recommended that the majority of White Bluff's assets should be treated as developer contributions 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.[37] The amount 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 agrees with the ALJ's conclusions regarding the invested capital of Double Diamond Utilities that should be classified as developer contributions.

To reflect its decision on this issue, the Commission deletes finding of fact 98 and modifies finding of fact 100 and conclusion of law 8.

H. Sunbelt Utilities v. Public Utility Commission

In addition to arguing against Double Diamond Utilities' proposed split, the White Bluff Ratepayers Group also argued that the holding in *Sunbelt Utilities v. Public Utility Commission*[38] is applicable and controlling in this proceeding. In that case, Sunbelt, a newly formed water and

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[32] Direct Testimony of Randy Gracy at 8:3–10 (Aug. 4, 2017). Double Diamond's Initial Brief at 21 (Nov. 22, 2017).
[33] Tr. at 67:10–20 (Gracy Cross) (Oct. 24, 2017).
[34] *Id.*; *see also* Direct Testimony of Nelisa Heddin at 38:6–39:12 (Sept. 8, 2017).
[35] *Id.*
[36] PFD at 49–50.
[37] PFD at 50.
[38] *Sunbelt Utilities v. Public Utility Commission*, 589 S.W.2d 392 (Tex. 1979).

Exhibit A

sewer utility, filed an application to change its water and sewer rates in Harris County.[39] A development company affiliated with the utility installed the initial utility system and transferred the assets to the utility without charge. The developer then wrote off the entire cost of the utility system in one year.[40] The Commission's examiner determined that because the development company recovered the cost of the utility assets through lot sales, the purchasers of the lots should not pay for the utility assets a second time through utility rates.[41] Thus, the utility assets paid for by the development company and recovered through lot sales should be excluded from rate base.[42] The Commission agreed with the examiner.

In 1979, the Sunbelt Utilities case came before the Supreme Court of Texas.[43] The court stated that the principal question in that case was "whether the Commission properly excluded the developer's cost of the utility system from the rate base because the rate payers had already paid for this system as part of the purchase price of their lots."[44] In answering this question, the court evaluated the issue of customer contributions of assets by courts and regulatory bodies in other states.[45] Specifically, the court discussed "the rule which is well established in other jurisdictions that contributions by a customer in aid of construction are properly excluded from the rate base. Under this rule the utility is not allowed to earn a rate of return on property acquired from or paid for by the rate payer."[46] The court ultimately held that "this rule is correct and here hold that consumer contributions in aid of construction should be excluded from a utility's rate base."[47] Therefore, that "the costs were properly excluded [by the Commission's examiner] as contributions in aid of construction."[48]

In this proceeding, the ALJ disagreed with the White Bluff Ratepayers Group's reading of *Sunbelt* and its holding. The ALJ concluded that the primary basis for the Commission's determination that the cost of the Sunbelt utility system should be removed from rate base was that

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[39] *Id.* at 393.
[40] *Id.* at 393–394.
[41] *See* Examiner's Report, *Petition of Sunbelt Utilities for Authority to Change Rates*, Docket No. 804, 3 P.U.C. Bull. 1167 (Mar. 22, 1978).
[42] *Id.*
[43] *Sunbelt Utilities v. Public Utility Commission*, 589 S.W.2d 392 (Tex. 1979).
[44] *Id.* at 392.
[45] *Id.* at 393.
[46] *Id.*
[47] *Id.*
[48] *Id.* at 392.

Exhibit A

the cost had been expensed by the Sunbelt developer against the amount it realized from the sale of the lots served by the utility system.[49] Therefore, according to the ALJ, the separate finding by the Commission in *Sunbelt* that the lot purchasers had paid the developer's cost of the utility system as part of the purchase price of the lots was not dispositive.[50]

The Commission agrees with the ALJ that the holding in *Sunbelt* is not controlling under the facts in this proceeding. However, the Commission reaches this decision for a different reason. In *Sunbelt*, the Supreme Court of Texas determined that the funds used to pay for the utility system originated with the customer and ultimately concluded that "consumer contributions in aid of construction should be excluded from a utility's rate base."[51] Unlike *Sunbelt*, the Commission in this proceeding has determined that the funds used to the pay for the utility systems at White Bluff originated with the developer at White Bluff not from White Bluff customers. Thus, the Commission concludes that *Sunbelt* is not applicable to this proceeding because the majority of the investment at White Bluff was contributed by the developer, not by customer contributions as was the case in *Sunbelt*.

I. Briefing Issues

After the Commission considered the proposal for decision, the Commission asked for briefing related to customer contributions in aid of construction and developer contributions to better inform its decision regarding the initial investment in the White Bluff systems.[52] Customer contributions in aid of construction and developer contribution are not defined in the Texas Water Code or Commission rules; nor are there any court decisions regarding the interpretation or application of these terms. In addition, there was no discussion by the parties in this proceeding regarding the meaning or application of these terms or whether the initial investments in this case were properly classified as developer contributions. Thus, the Commission deemed it appropriate to ask for briefing to assist its determination on the appropriate interpretation and application of these terms in this proceeding.

There is no difference in the treatment of customer and developer contributions when determining a utility's invested capital. Under Commission rules, all contributions in aid of

[49] PFD at 47.
[50] PFD at 47–48.
[51] *Id.*
[52] Briefing Order (May 30, 2018).

Exhibit A

construction, developer contributions, and other sources of cost-free capital, must be deducted from rate base.[53] There is, however, a difference in the treatment of depreciation expense between customer-contributed property and developer-contributed property.[54] The depreciation expense claimed by a utility may not include depreciation on property provided by explicit customer agreements or funded by customer contributions in aid of construction.[55] However, a utility's claimed depreciation expense may include property contributed by a developer or governmental entity, so long as it is currently used and useful.[56]

After considering the parties' briefs and *Sunbelt*, the Commission concludes that it is appropriate to adopt a straightforward and common-sense interpretation of these terms based on the plain language of the water code. In determining whether a contribution is a customer contribution in aid of construction or a developer contribution, the Commission will consider the source of the funds or assets and how the funds or assets ultimately reached the utility. Accordingly, the Commission concludes that developer contributions shall include monies or assets transferred from a developer to a utility for utility facilities, not including such items originally obtained from customers. Customer contributions in aid of construction shall include monies provided by customers to a utility for the express purpose of funding utility facilities, even if the funds pass through the hands of other persons before reaching the utility.

To reflect its decision on this matter and related procedures, the Commission adds new findings of fact 17H through 17J, 90A and 93A, and conclusions of law 8A and 8B.

J. Used and Useful Investment at White Bluff

Throughout the proceeding, the White Bluff Ratepayers Group argued that a large percentage of the water and sewer lines at White Bluff are not used and useful because the White Bluff systems were designed and built to serve many more lots than are currently served. Therefore, the costs associated with the water and sewer lines should not be included in rate base.

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[53] 16 TAC § 24.31(c)(2)(B)(v); 16 TAC § 24.31 (c)(3); *see also* TWC § 13.185(b).
[54] *See* TWC § 13.185(j).
[55] TWC § 13.185(j).
[56] *Id.*; 16 TAC § 24.31(b)(1)(B).

Exhibit A

The ALJ concluded that the question of whether the water and sewer lines are used and useful was moot because the majority of the investment in the water and sewer lines at White Bluff were determined to be developer contributions, and thus removed from rate base.[57]

The Commission agrees with the ALJ that for purposes of rate base, the question of whether the water and sewer lines at White Bluff are used and useful is moot. However, because the Commission concluded that the initial investment at White Bluff—including the investment in the water and sewer lines—should be treated as developer contributions, the Commission must still determine whether the developer contribution at White Bluff is currently used and useful in accordance with TWC § 13.185(j) for purposes of depreciation.

TWC § 13.185(j) 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 lines and 60 miles of sewer lines at White Bluff, which were designed to serve 6,314 lots across over approximately 3,500 acres.[58] 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.[59] 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.[60]

The sales contract used to sell lots in the White Bluff subdivision states 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."[61] Therefore, the sales contract imposes an obligation to provide water and sewer service to any lot at White Bluff when requested. Further, because White

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[57] PFD at 53.
[58] Tr. at 196:1–197:6 (Harkins Cross) (Oct. 24, 2017).
[59] Direct Testimony of Randy Gracy at 8:7–8, 11:1–2 (Aug. 4, 2017).
[60] Tr. at 63:22–64:3 (Gracy Cross) (Oct. 24, 2017).
[61] White Bluff Subdivision Sale Contract, WBRG-1G, Direct Testimony of Nelisa Heddin at 90 (Sept. 8, 2017).

Exhibit A

Bluff is within Double Diamond Utilities' certificated service area, the Texas Water Code also imposes such an obligation.[62]

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 concludes that Double Diamond Utilities' investment at White Bluff is currently used and useful. It was reasonable for the White Bluff developer to build out the water and wastewater systems in phases as the subdivision developed such that when any lot within White Bluff was sold and a new owner requested service, service can be immediately provided. In addition, Double Diamond Utilities is currently obligated to provide service if a lot owner decides to build a house on her lot. Therefore, 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).

To reflect its decision on this issue, the Commission modifies findings of fact 103 through 105, deletes finding of fact 107, adds new findings of fact 105A and 107A, and adds new conclusions of law 8C and 8D to reflect its determination that 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). In addition, the Commission deletes conclusion of law 7 as moot.

K. Return on Equity

The ALJ recommended that the Commission approve a 9.84% return on equity for Double Diamond Utilities. The ALJ determined Double Diamond Utilities' use of four different analyses to calculate a return on equity for Double Diamond Utilities was more persuasive than the analyses performed by Commission Staff, who used only the discounted cash flow analysis and capital asset pricing model.

The Commission disagrees with the ALJ's conclusion and instead adopts Commission Staff's recommended return on equity of 8.79%. The discounted cash flow model is widely accepted by the regulatory industry and the Commission, and is often used to calculate the appropriate return on equity for a utility.

[62] TWC § 13.250(a).

Exhibit A

To reflect its decision on this issue, the Commission deletes findings of fact 113 and 119, modifies findings of fact 110 through 112, 114, and 126, and modifies conclusion of law 10.

L. Other changes

The Commission makes additional changes to findings of fact and conclusions of law to correct citations, spelling, numbering, and punctuation and for stylistic purposes. In addition, the Commission adds new findings of fact 3A and 12A and conclusion of law 1A to more completely describe the applicant.

After the issuance of the proposal for decision, the parties filed exceptions and replies to exceptions, and the ALJ filed a response to the exceptions and replies and made clarifications to the proposal for decision. In addition, the Commission heard oral argument at the May 10, 2018 open meeting and instructed Commission Staff to conduct a number run to reflect the Commission's discussion at the open meeting. The Commission adds new findings of fact 17A through 17G to address events that transpired after the issuance of the proposal for decision. In addition, the Commission modifies findings of fact 127 and 128 to address changes to Double Diamond Utilities' rate schedules after Commission Staff's number run.

The Commission adopts the following findings of fact and conclusions of law:

II. Findings of Fact

Applicant

1. Double Diamond Utilities is an investor-owned company that provides water and sewer utility service to several communities in North Texas through facilities and equipment it operates.

2. Double Diamond Utilities provides water and sewer utility service to The Cliffs development in Palo Pinto County and White Bluff development in Hill County under water certificate of convenience and necessity (CCN) number 12087 and sewer CCN number 20705.

3. Double Diamond Utilities has approximately 640 water customers and 567 sewer customers in White Bluff and approximately 287 water customers and 239 sewer customers in The Cliffs.

Exhibit A

3A. Double Diamond Utilities has four existing tariffs, one for each of the water and sewer systems at White Bluff and The Cliffs.

4. White Bluff is a resort and residential development with amenities such as a golf course, marina, hotel, restaurant, conference center, spa, and swimming pools.

5. The White Bluff water system obtains its water from four wells in the Trinity aquifer, which is regulated by the Prairielands Groundwater Conservation District.

6. The Cliffs is a resort and residential development with amenities similar to those at White Bluff. The Cliffs water system obtains its water from Lake Possum Kingdom.

7. Double Diamond Utilities is a wholly-owned subsidiary of Double Diamond-Delaware, Inc.

Application, Notice, and Protest

8. On August 1, 2016, Double Diamond Utilities filed two rate-filing packages, one for White Bluff and one for The Cliffs. Each rate-filing package requested a rate increase and related tariff changes for water and sewer rates.

9. The application is based on a test year of January 1, 2015 through December 31, 2015.

10. Double Diamond Utilities mailed notice of the proposed rate change to all of its customers in White Bluff and The Cliffs on or about August 10, 2016.

11. Between August 10, 2016 and September 1, 2016, more than 10% of Double Diamond Utilities' ratepayers in White Bluff and The Cliffs filed timely protests to the rate changes proposed by the application.

12. The application was found to be administratively complete on September 7, 2016.

12A. The application considered in this Order consists of the application filed by Double Diamond Utilities on August 1, 2016, as amended and supplemented by its filing on April 26, 2017.

General and Procedural Findings

13. On September 8, 2016, the Commission referred this docket to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

Exhibit A

14. On October 7, 2016, the Commission issued its preliminary order, identifying 41 issues to be addressed in this proceeding.

15. On October 18, 2016, a SOAH administrative law judge (ALJ) convened a prehearing conference in Austin, Texas. The following appeared and were admitted as the parties in this case: Double Diamond Utilities; the White Bluff Ratepayers Group; The Cliffs Utility Committee and Commission Staff.

16. By agreement between the parties, a SOAH order set the effective date for the proposed rate changes as April 1, 2018, and set February 21, 2018, as the relate-back date for purposes of determining refunds or surcharges.

17. The hearing on the merits convened on October 24, 2017 and concluded on October 26, 2017. The parties filed initial briefs on November 22, 2017, and reply briefs on December 15, 2017, which is when the record closed.

17A. On February 13, 2018, the SOAH ALJ issued the proposal for decision.

17B. Double Diamond Utilities, Commission Staff, the White Bluff Ratepayers Group, and The Cliffs Utility Committee filed exceptions to the proposal for decision on March 28, 2018.

17C. Double Diamond Utilities, Commission Staff, and the White Bluff Ratepayers Group filed replies to exceptions on April 12, 2018.

17D. The Commission granted Double Diamond Utilities request for oral argument, filed on May 1, 2018.

17E. On May 2, 2018, the SOAH ALJ filed a response to the exceptions and replies and made clarifications to the proposal for decision.

17F. The Commission heard oral argument at the May 10, 2018 open meeting.

17G. At the May 10, 2018 open meeting, the Commission instructed Commission Staff to conduct a number run to reflect the Commission's discussion at the open meeting.

17H. On May 30, 2018, the Commission issued an order requesting briefing on the differences between customer contributions in aid of construction and developer contributions.

17I. Double Diamond Utilities, Commission Staff, and the White Bluff Ratepayers Group filed initial briefs on July 2, 2018.

Exhibit A

17J. Double Diamond Utilities, Commission Staff, and the White Bluff Ratepayers Group filed reply briefs on July 9, 2018.

Revenue Requirement

Operation and Maintenance (O&M) Expenses

Other Revenues

18. Double Diamond Utilities received $3,600 in revenue from Nextlink that should be added to White Bluff water's other revenues.

Other Volume-Related Expenses

19. Double Diamond Utilities included $830 of White Bluff water expenses in the other volume-related expense account that were actually fixed expenses belonging in the other plant maintenance account.

20. A $1,148 expense for chlorine gas cylinders should be added to the other volume-related expense account for White Bluff water.

21. Double Diamond Utilities included $530 of White Bluff sewer expenses in the other volume-related expenses account that were actually fixed expenses belonging in the other plant maintenance account.

Employee Labor Expense

22. DELETED.

23. DELETED.

24. Double Diamond Utilities employees Clovis Wilhelm, Jody Bledsoe, and Dwayne Cota worked on both the water and sewer systems at White Bluff and responded to service calls on both systems during the test year.

25. DELETED.

26. The salaries of Clovis Wilhelm, Jody Bledsoe, and Dwayne Cota were reasonable and necessary for Double Diamond Utilities to provide water and sewer services to its customers at White Bluff.

26A. Double Diamond Utilities failed to provide any evidence of the actual time each employee spends working on each system.

Exhibit A

26B. In determining whether an employee salary is reasonable and necessary, the amount of time an employee spends working on a system and providing service to the ratepayers is reflected in the amount of that employee's salary allocated to the system.

26C. Double Diamond Utilities' employee salaries should be allocated to White Bluff water or White Bluff sewer based on the type of license held by each employee.

26D. The record reflects that Mr. Whitworth and Mr. Keeton only spent a small time installing taps and spent their other remaining time performing other duties as needed.

26E. Double Diamond Utilities did not provided any supporting documentation explaining or detailing what these other duties include.

26F. Removing the salaries of Mr. Whitworth and Mr. Keeton from Double Diamond Utilities' cost of service is warranted because Double Diamond Utilities has not shown that the positions held by Mr. Whitworth and Mr. Keeton are a reasonable and necessary expense.

Contract Work

27. Todd Dilworth, the White Bluff utility manager for Double Diamond Utilities, is on call at all times to respond to service calls at the White Bluff water and sewer systems.

28. It is reasonable to have Mr. Dilworth on call at all times in case issues arise that affect service, and it is a reasonable expense to allow Mr. Dilworth to have a mobile phone with cell service so that there can be effective and efficient communication regarding any such issues.

29. Double Diamond Utilities' phone allowance of $900 for 12 months for Mr. Dilworth is a reasonable and necessary expense incurred to provide water and sewer services at White Bluff.

30. A total of $890 for White Bluff water and $790 for White Bluff sewer in general and administrative expenses attributable to security at the White Bluff resort should be reallocated from miscellaneous expenses to contract work as intercompany labor transfers.

Transportation

31. Mr. Dilworth and another employee have Double Diamond Utilities vehicles that they can use to respond at any time to a service call at White Bluff.

Exhibit A

32. Mr. Dilworth drives one of the trucks to and from work daily, and the other truck is used by the Double Diamond Utilities employee assigned to be on call to drive to and from work during such assignment.

33. Mr. Dilworth and the on-call Double Diamond Utilities employee do not use the trucks for any personal reasons. Although they use the trucks to drive to and from work, this use is reasonable and necessary so that they can respond to a service call from home if such a call is made.

34. The fuel costs incurred by Double Diamond Utilities for Mr. Dilworth and the other employee driving to and from work in company trucks while on-call are not purely commuter miles and are reasonable and necessary expenses incurred by Double Diamond Utilities in providing service at White Bluff.

35. A vehicle lease expense ($2,912 for both the water and sewer systems) and a tool box expense for White Bluff of $850 should be removed from transportation expenses and added to the depreciation schedule.

Other Plant Maintenance

36. Grinder pumps are part of the White Bluff wastewater system and installed at each service location in the White Bluff system.

37. There are significant, typical, and recurring maintenance, repair, and replacement costs associated with the grinder pumps in the White Bluff sewer system.

38. Approximately 20 to 30 grinder pumps are replaced and approximately half of the pumps are repaired every year in the White Bluff sewer system.

38A. It is appropriate for Double Diamond Utilities to expense the amounts spent in the test year for all grinder-pump repairs for White Bluff sewer and capitalize the amounts spent in the test year to purchase replacement grinder pumps for White Bluff sewer.

39. DELETED.

40. The $709 included in the trial balance for the White Bluff water system reflects costs incurred in the operation and maintenance of the water system at White Bluff and is appropriately included as other plant maintenance expense.

Exhibit A

41. DELETED.

42. The invoice from Industrial Electric Repair and Sales referencing rewind 3 phase, machine work on pump, and pump repair, and reflecting charges for bearings and a pump seal pertains to repairs, and the costs reflected in this invoice are appropriately designated as other plant maintenance expenses.

43. The invoice from Wallace Controls & Electric referring to a call regarding a well not running and reflecting a burned-out motor protector and service wire and a motor protector replacement pertains to repairs, and the costs reflected in this invoice are appropriately designated as other plant maintenance expenses.

Professional Services

44. The cost of renewing Double Diamond Utilities' wastewater permit for White Bluff, which Double Diamond Utilities has historically incurred approximately every three years, should be allowed to be recovered in equal parts in Double Diamond Utilities' rates over three years.

45. DELETED.

46. DELETED.

46A. Double Diamond Utilities' cost associated with its CCN amendment for The Cliffs system is not a recurring expense and should not be recovered from ratepayers.

47. Double Diamond Utilities did not incur any cost to obtain a CCN amendment for White Bluff during the test year, and the costs of such amendment reflected in the White Bluff professional services account should be removed.

Insurance

48. The premiums paid by Double Diamond Utilities for worker's compensation insurance ($1,444 for water and $373 for sewer) are not recoverable insurance expenses.

49. Some portion of the premium paid by Double Diamond Utilities for an umbrella insurance policy is attributable to insurance coverage that is incurred as part of providing service and maintaining plant.

Exhibit A

50. The amount of the umbrella premium attributable to coverage for providing utility service and maintaining plant does not correlate to the base premium for such coverage.

51. Double Diamond Utilities failed to prove the cost of the umbrella coverage that relates to Double Diamond Utilities' provision of water and sewer utility service.

Salaries

52. Seven employees worked for the White Bluff systems at some point during the test year, however, not all seven employees worked the entire test year.

53. The seven employees who worked for the White Bluff utility systems during the test year earned and were paid $151,074 in salary during the test year; they did not earn and were not paid their full yearly salaries.

54. Between August 4, 2017 and October 24, 2017, there were only four employees working for the White Bluff systems.

55. Employee salaries totaling $151,074 are reasonable and necessary expenses for Double Diamond Utilities to provide services through the White Bluff systems.

Regulatory Fees

56. The Prairieland Groundwater District fees paid by Double Diamond Utilities for White Bluff should not be included in Double Diamond Utilities' revenue requirement, but should be included as a pass-through provision in Double Diamond Utilities' tariff.

57. Double Diamond Utilities' expenses related to water tests that occur every three years should be normalized such that Double Diamond Utilities recovers one-third of the expenses every year.

Miscellaneous Expenses

58. Equipment lease fees of $19,728 for White Bluff water and $20,148 for White Bluff sewer associated with automatic meter reading and the 50,000 gallon wastewater treatment plant should be removed from the miscellaneous expense accounts.

59. Sewer-tap-fee expenses of $500 should be removed from the White Bluff sewer miscellaneous expense account.

Exhibit A

60. Double Diamond Utilities' utility offices are located within the White Bluff and The Cliffs resorts' administrative buildings.

61. DELETED.

62. DELETED.

63. DELETED.

64. DELETED.

65. DELETED.

66. The resorts incur and pay costs for overhead and general and administrative expenses, and 3% of those costs are then expensed to Double Diamond Utilities.

66A. The amounts billed to Double Diamond Utilities are not based on the Double Diamond Utilities' share of resort expenses that it directly uses; instead, it is an across-the-board charge of 3% of all overhead and general and administrative expenses incurred by the resort.

66B. The entities that own and operate the resorts are wholly-owned subsidiaries of Double Diamond-Delaware.

66C. No evidence was admitted showing what other entities or persons would pay the resorts for the same class of comparable amenities.

66D. No evidence was admitted establishing the market price for the same class of items provided to the systems.

67. DELETED.

Depreciation

68. The $80 expense for a truck bed mat should be removed from the White Bluff sewer depreciation schedule.

Use of Trending Study to Determine Original Cost

69. Double Diamond Utilities retained Victoria Harkins to perform an analysis of the utility assets at White Bluff and The Cliffs and determine the original cost of such assets.

Exhibit A

70. To perform her analysis, Ms. Harkins looked only at invoices provided to her by Double Diamond Utilities for the utility assets and did not review any balance sheets or general ledgers.

71. The invoices reviewed by Ms. Harkins for purposes of determining the original cost of utility assets did not reflect the entirety of the pipe work for the White Bluff and The Cliffs systems.

72. Ms. Harkins performed a trending study to establish the original cost for certain of White Bluff's and The Cliffs's assets for which no invoice was available.

73. Double Diamond Utilities' Chief Financial Officer understood that the costs of Double Diamond Utilities' utility infrastructure would have been recorded in a balance sheet based on invoices for such expenses.

74. It is unclear whether historical records exist (or existed at the time the application was prepared) showing the original construction costs for the collection and distribution lines at White Bluff and The Cliffs.

75. Construction of the collection and distribution lines at the White Bluff development began around 1990. Construction was ongoing through 2007 or 2008.

76. Ms. Harkins's use, in her trending study, of January 1, 1996, as an installation date for the pipe work was reasonable and appropriate.

77. Any increase in the calculated original cost resulting from the use of 1996 as the installation date was corrected by installation performed up to ten years after that date and beyond, at which time the cost would have been even greater.

Fully Depreciated Assets

78. All assets that have fully depreciated should be removed from Double Diamond Utilities' White Bluff depreciation schedules, as set forth in Tables NDH-14, NDH-15, NDH-16, and NDH-17 of the direct testimony of the White Bluff Ratepayers Group witness Nelisa Heddin.

Federal Income Tax Expense

79. Treating White Bluff and The Cliffs as separate entities when calculating federal income tax expense is not appropriate.

Exhibit A

79A. The White Bluff and The Cliffs systems are both owned and operated by Double Diamond Utilities. Double Diamond Utilities is a subchapter S corporation, a pass-through entity.

79B. Double Diamond-Delaware, is a subchapter S corporation.

79C. Double Diamond-Delaware is the parent company and sole shareholder of Double Diamond Utilities.

79D. R. Mike Ward is the majority shareholder of Double Diamond-Delaware, owner of 94.8% of the shares with an employee stock ownership plan owning 5.2%.

79E. Because Double Diamond-Delaware is also a subchapter S corporation, it is likely that the majority of tax expenses of Double Diamond Utilities are paid at the individual level by Mr. Ward, the majority shareholder of Double Diamond-Delaware.

79F. The record does not reflect what amount of Double Diamond Utilities' tax expense is paid by Mr. Ward or the applicable tax rate.

79G. It is appropriate to treat Double Diamond Utilities as a subchapter C corporation for the purpose of determining its federal income tax expense.

79H. A subchapter C corporation's applicable federal income tax rate is 21% for ratemaking purposes.

Other Assessments and Taxes

80. The sales and title taxes for the 2014 Ford truck are included in the asset depreciation schedule and therefore should be removed from taxes.

Original Cost of Plant In Service

81. The correct original cost of a 75,000 gallon gst, field erect with pad and 75,000 gallon gan, field erect mth pad is $16,565, and the water depreciation schedule for The Cliffs system should be revised accordingly.

82. The original cost of the TK Crossbed Toolbox set forth on the White Bluff sewer depreciation schedule should be revised to $850 to remove an $80 expense for a truck bed mat that was also included in White Bluff's cost of service.

Exhibit A

Cash Working Capital

83. A reasonable cash working capital allowance for the White Bluff utility system is 1/12 of the system's operation and maintenance expenses.

84. Double Diamond Utilities maintains cash balances for both White Bluff and The Cliffs systems under one CCN, filed one annual report for both developments, and filed a single rate case for both developments.

85. Both the White Bluff and The Cliffs systems are operated and maintained by Double Diamond Utilities and have access to the same capital.

86. A reasonable cash working capital allowance for The Cliffs utility system is 1/12 of the system's operation and maintenance expenses.

Developer Contributions

87. In determining the original cost of used and useful utility plant, property, and equipment for purposes of calculating its rate base, Double Diamond Utilities used an asset list prepared jointly by Double Diamond Utilities' President Randy Gracy and Double Diamond Utilities witness Ms. Harkins, which identifies certain assets to be 80% developer-contributed. The 80% portion of the cost of those assets was removed from Double Diamond Utilities' rate-base calculation.

88. There is no contemporaneous accounting or other documentation showing that the assets on the asset list prepared by Mr. Gracy and Dr. Harkins were 80% developer-contributed.

89. Until December 1996, when Double Diamond Utilities was created, Double Diamond, Inc., another wholly-owned subsidiary of Double Diamond-Delaware, was the developer and the utility company at White Bluff and contracted for the construction of the original infrastructure of the White Bluff utility systems.

90. Before December 1996, most of the utility infrastructure was paid for by Double Diamond, Inc.

90A. All investments at White Bluff before December 30, 1996 are developer contributions.

91. In 1997, Double Diamond Properties Construction Co., also created in December 1996 as a wholly-owned subsidiary of Double Diamond-Delaware, began paying for most of the utility infrastructure.

92. Approximately 61% of the water system assets and 60% of the sewer system assets included in Double Diamond Utilities' requested rate base for White Bluff were constructed before December 1996.

93. Most of the White Bluff assets included in Double Diamond Utilities' requested rate base for White Bluff that were constructed after December 1996 were paid for by Double Diamond Properties Construction Co.

93A. The majority of White Bluff assets constructed after December 30, 1996 are developer contributions.

94. In December 1997, Double Diamond Utilities filed an application to change rates at White Bluff, The Cliffs, and Oakwood, another development that it serves. In that filing, there were no contributions in aid of construction identified.

95. In August 2007, Double Diamond Utilities filed an application to change water rates at White Bluff, The Cliffs, and the Retreat, another development that it serves. The application was amended in December 2007, but neither the August 2007 nor the December 2007 amendment indicated that a portion of Double Diamond Utilities' assets included in rate base was developer contributed.

96. In October 2008, Double Diamond Utilities filed another rate change application for the water systems at White Bluff, The Cliffs, and the Retreat, which identified the amount of developer contributions as approximately $1.9 million.

97. In February 2009, Double Diamond Utilities filed another rate change application for the water systems at White Bluff, The Cliffs, and the Retreat, and the application indicated a total of $1,119,399 in developer contributions for the three systems.

98. DELETED.

99. Double Diamond Utilities is in the best position to access and discover the evidence necessary to differentiate between plant, equipment, and property contributed by the developer and that invested by Double Diamond Utilities.

Exhibit A

100. The net book value of the seven utility assets claimed as part of Double Diamond Utilities' rate base and paid for by Double Diamond Utilities are properly included in Double Diamond Utilities' invested capital.

Property Not Belonging to Double Diamond Utilities

101. Tract 2 in White Bluff was conveyed by Double Diamond, Inc. to the White Bluff Property Owners Association in December 1995, as well as certain facilities included on such tract, including a water well, the water plant, and the water storage tank.

102. Double Diamond Utilities' request for the net book value of Tract 2 and the facilities on Tract 2 of $88,565 and an annual depreciation of $2,060 to be included in its rate base should be denied.

Developer Contribution - Used and Useful

103. The White Bluff systems serve 6,314 lots.

104. There are approximately 65 miles of water lines and 60 miles of sewer lines at White Bluff.

105. Only approximately 10% of the lots at White Bluff development are actually receiving service from Double Diamond Utilities.

105A. 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.

106. Approximately 85 to 90 percent of the lots at White Bluff have been sold.

107. DELETED.

107A. The developer-contributed assets at White Bluff are currently used to serve residents and are available to serve any new residents.

Accumulated Deferred Federal Income Tax (ADFIT)

108. There is no accounting evidence that Double Diamond Utilities incurred a net operating loss or documentary proof in the record that Double Diamond Utilities did not defer payment of federal income taxes because of a net operating loss.

109. The estimate of the effect of the alleged net operating loss carryover on the ADFIT calculated by Commission Staff witness Debi Loockerman was unsupported.

Exhibit A

Rate of Return

Return on Equity

110. A reasonable return on equity for Double Diamond Utilities, based on a discounted cash flow analysis employed with the capital asset pricing model is 8.79%.

111. A return on equity of 8.79% is reasonably sufficient to assure confidence in Double Diamond Utilities' financial soundness and will be adequate to maintain and support its credit and allow it to raise necessary capital.

112. A return on equity of 8.79% will yield a fair return on Double Diamond Utilities' invested capital.

113. DELETED.

114. A small stock risk premium on top of Double Diamond Utilities' return on equity is not warranted.

115. Approximately 40% of the unaccounted for water noted in the application is water loss due to brine discharge after water from the lake goes through a reverse osmosis plant, and thousands of gallons a day used to backwash sand filters.

116. Additional water is used to regularly flush out the lines at White Bluff and The Cliffs and is therefore unaccounted for.

117. Double Diamond Utilities employs various methods at The Cliffs to track down leaks, and Double Diamond Utilities has responded to and repaired, discovered, and reported leaks in a reasonable manner.

118. The utility crew at The Cliffs is instructed to respond to reports of leaks as quickly as possible and make the necessary repairs. Some leaks can be fixed in a few hours, and most leaks are repaired the same day or the day after they are reported.

119. DELETED.

Cost of Debt

120. A 4.91% cost of debt, which is Double Diamond-Delaware's overall weighted average cost of debt as of December 31, 2015, is an appropriate cost of Double Diamond Utilities' debt.

Exhibit A

Capital Structure

121. Double Diamond Utilities took out a $3 million loan secured by White Bluff utility assets, the proceeds of which Double Diamond-Delaware used to make capital improvements and for other purposes. Double Diamond-Delaware guaranteed repayment of the debt.

122. It is unclear how the $3 million proceeds of the loan were accounted for.

123. Double Diamond, Inc. has been making the payments on the loan; if Double Diamond, Inc. did not make those payments and there was a default, the bank would look to Double Diamond-Delaware as guarantor, and not Double Diamond Utilities, for payment.

124. The $3 million loan is not related to Double Diamond Utilities' debt financing and therefore cannot serve as the basis for the capital structure recommended by the White Bluff Ratepayers Group.

125. The appropriate capital structure for Double Diamond Utilities is 47.27% debt and 52.73% equity, which is representative of the capital structure of other companies in the water utility industry and reflects an efficient use of capital.

Overall Rate of Return

126. Double Diamond Utilities' overall rate of return should be set as follows:

Component	Ratio	Cost Rate	Weighted Cost Rate
Debt	47.27%	4.91%	2.32%
Equity	52.73%	8.79%	4.63%
Overall			6.95%

Rate Design

127. The rate structures set forth in the attachments to this Order will recover Double Diamond Utilities' revenue requirements for White Bluff water and White Bluff sewer.

128. The rate structures set forth in the attachments to this Order will recover Double Diamond Utilities' revenue requirement for The Cliffs water and The Cliffs sewer.

Exhibit A

III. Conclusions of Law

1. Double Diamond Utilities is a utility and a public utility as defined in Texas Water Code (TWC) § 13.002(23), and a retail public utility as defined in TWC § 13.002(19).

1A. Double Diamond Utilities is a class B utility as defined in TWC § 13.002(4-b).

2. The Commission has jurisdiction over the application under TWC §§ 13.041, 13.043(b), 13.181–.185, 13.1871, and 13.1872.

3. All required notices of the application and the contested case hearing were given as required by law in TWC § 13.1871 and Administrative Procedure Act[63] §§ 2001.051–.052.

4. The ALJ conducted a contested case hearing and proposed a decision on the application under the authority of chapter 2003 of the Texas Government Code and chapter 13 of the TWC.

5. Double Diamond Utilities bears the burden of proof that its proposed rates are just and reasonable under TWC § 13.184(c).

6. DELETED.

6A. A utility may only include expenses that are reasonable and necessary to provide service to the ratepayers in its cost of service.

6B. The entities that own and operate the resorts are affiliates of Double Diamond Utilities under TWC § 13.002(2).

6C. The 3% charge of overhead and general and administrative expenses from the White Bluff and The Cliffs resorts to Double Diamond Utilities is an affiliate transaction under TWC § 13.185(e).

6D. Expenses paid from Double Diamond Utilities to the resorts are an affiliate payment under TWC § 13.185(e).

6E. The Commission may not include costs related to affiliate transactions in Double Diamond Utilities' rates based on the record in this docket.

7. DELETED.

[63] Tex. Gov't Code Ann. §§ §§ 2001.051–.052 (West 2016).

Exhibit A

8. Double Diamond Utilities failed to meet its burden to show how much of the original cost of the utility assets included in its proposed rate base for White Bluff were contributed by the utility under TWC § 13.184(c).

8A. All investments at White Bluff before December 30, 1996 are developer contributions.

8B. The majority of White Bluff assets constructed after December 30, 1996 are developer contributions.

8C. Double Diamond Utilities' developer contribution at White Bluff is currently used and useful.

8D. Double Diamond Utilities is permitted to recover a depreciation expense on its used and useful developer-contributed assets at White Bluff in accordance with TWC § 13.185(j).

9. In compliance with TWC § 13.183, and based on the findings of fact and conclusions of law, Double Diamond Utilities' overall revenues approved in this case permit Double Diamond Utilities a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public over and above its reasonable and necessary operating expenses.

10. An overall rate of return of 6.95% will permit Double Diamond Utilities a reasonable opportunity to earn a reasonable return on its invested capital in accordance with TWC § 13.184.

11. The rates approved in this Order are based on original cost, less depreciation, of property used and useful to Double Diamond Utilities' provision of service in accordance with TWC § 13.185

12. The rates approved in this Order are just and reasonable, comply with the ratemaking provisions in TWC chapter 13, and are not unreasonably discriminatory, preferential, or prejudicial.

13. The increase in revenue that would have been generated by Double Diamond Utilities' proposed rates should be calculated using the proposed rates from the amended application, which were those upon which a contested hearing was held under 16 TAC § 24.33(b).

Exhibit A

IV. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission adopts the proposal for decision, including findings of fact and conclusions of law, except as discussed in this Order.

2. Double Diamond Utilities' application for a rate increase at White Bluff and The Cliffs is approved, as amended by the proposal for decision and this Order.

3. Double Diamond Utilities shall record its excess accumulated deferred federal income tax in a regulatory liability account for return to customers in Double Diamond Utilities' next base-rate case.

4. Within 10 days of the issuance of this Order, Commission Staff shall file a copy of Double Diamond Utilities' tariffs with Central Records to be marked *Approved* and kept in the Commission's tariff book.

5. All other motions and any other requests for general or specific relief, if not expressly granted, are denied.

Exhibit A

Signed at Austin, Texas the 30th day of August 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

I respectfully abstain.

SHELLY BOTKIN, COMMISSIONER

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Exhibit A

OPEN MEETING COVER SHEET

COMMISSIONER MEMORANDUM

MEETING DATE:	November 8, 2018
DATE DELIVERED:	November 7, 2018
AGENDA ITEM NO.:	17
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

Distribution List:
Commissioners' Offices (6)
Journeay, Stephen
Urban, John Paul
Whittington, Pam
Margaret Pemberton (5)
OPD Support Team
Carrasco, Carlos
Carter, Lisa
Central Records (Open Meeting Notebook)

Exhibit B

715

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, November 8, 2018 Open Meeting, Item No. 17.

DATE: November 7, 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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Exhibit B

Public Utility Commission of Texas

Memorandum

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

FROM: Chairman DeAnn T. Walker

DATE: November 7, 2018

RE: Open Meeting of November 8, 2018 – Agenda Item No. 17
Docket No. 46245 – *Application of Double Diamond Utility Company, Inc. for Water and Sewer Rate/Tariff Change*

Motions for rehearing were filed in this docket by the White Bluff Ratepayers Group and by Double Diamond Utilities on September 21, 2018 and September 24, 2018, respectively. I recommend that the Commission grant rehearing to address the following matters.

First, I agree with the White Bluff Ratepayers Group regarding how refunds and surcharges in this docket will be calculated and tracked. I recommend amending the order accordingly and also opening a compliance docket to manage this process.

Second, I agree with Double Diamond Utilities that the Commission's order and Double Diamond Utilities' approved tariffs did not treat its grinder-pump costs consistent with the Commission's decision on that issue. Thus, the order should be corrected to properly reflect the Commission's decision.

Finally, while I believe the Commission's decisions contained in the order were correct, I do not believe that the order adequately explained the rationale on every issue. In addition, the lack of specific numbers related to the decisions made the order unclear in some places. Therefore, the order should be improved by elaborating on the rationale for certain decisions, and by identifying specific amounts for certain disallowances, rate of return components, and amounts related to Double Diamond Utilities' revenue requirement.

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

Exhibit B

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