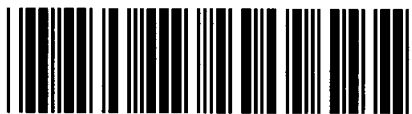




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SOAH DOCKET NO. 473-17-0067.WS
PUC DOCKET NO. 46247

APPLICATION OF DOUBLE § BEFORE THE STATE OFFICE
DIAMOND PROPERTIES §
CONSTRUCTION CO. DBA ROCK § OF
CREEK FOR WATER RATE/TARIFF §
CHANGE § ADMINISTRATIVE HEARINGS

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**ROCK CREEK HOMEOWNERS' OBJECTIONS TO PREFILED DIRECT
TESTIMONY OF DOUBLE DIAMOND PROPERTIES CONSTRUCTION CO.**

COMES NOW, the Rock Creek Homeowners ("RCH"), and hereby submits these objections to the prefiled testimony submitted in the above-referenced matter by the applicant, Double Diamond Properties Construction Co. dba Rock Creek ("DDPC"), as follows:

I. Objections to the Prefiled Testimony of Randy Gracy

Opinion testimony from lay witnesses is limited to those: "(a) rationally based on the witness's perception; and (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue." TEX. R. EVID. 701. RCH objects to the following statements made by Mr. Gracy as inadmissible lay witness opinion testimony:

- A. Line 5:20 [Mr. Gracy does not have the knowledge or experience to give opinion testimony as to the type of information commonly and reasonably relied on by professionals in the field of water and wastewater ratemaking];
- B. Line 5:23 [Mr. Gracy does not have the knowledge or experience to give opinion testimony as to whether the methods and assumptions employed in preparing DDPC's rate application were reasonable];

- C. Line 8:25 and Line 9:1 [Mr. Gracy does not have the knowledge or experience to give opinion testimony as to whether the historic test year expenses that were included in the rate application were necessary and reasonable].

II. Objections to the Prefiled Testimony of Greg Edwards

The Best Evidence Rule states, “[a]n original writing...is required in order to prove its content unless these rules or other law provides otherwise.” Tex. R. Evid. 1002. RCH objects to Lines 4: 27-29 of Mr. Edwards testimony because it discusses the contents of “An Engineering Report” that was prepared and submitted to TCEQ. This testimony should be deemed inadmissible because the report itself, and not his testimony regarding what it contains, is the best evidence as to the report’s contents.

III. Objections to the Prefiled Testimony of Chris Ekrut

- A. An expert witness may state an opinion on a mixed question of law and fact, “so long as the opinion is confined to the relevant issues and is based on proper legal concepts.” *Birchfield v. Texarkana Mem’l Hosp.*, 747 S.W.2d 361, 365 (Tex. 1987); TEX. R. EVID. 704. An expert witness, however, cannot state an opinion or conclusion on a pure question of law. RCH objects to the following statements by Mr. Ekrut as improper legal conclusions or testimony as to legal issues:
1. Lines 9:3-8 [Mr. Ekrut provides his opinion on what legal rules and statutes govern the determination of a fair rate of

return, which is testimony as to a purely legal issue and is not a mixture of law and fact];

2. Lines 10:4-23 [Mr. Ekrut provides his opinions on prior cases that he believes give a legal precedent for assuming the parent company capital structure in determining rate of return];

3. Lines 12:23-25 [Mr. Ekrut states what he believes the PUC rules allow to be included in a rate application as operations and maintenance expense];

B. RCH objects to Lines 11:1-6 in Mr. Ekrut's testimony as inadmissible hearsay [Mr. Ekrut offers statements made in the American Water Works Association Manual to prove the truth of the matter asserted].

IV. PRAYER

RCH respectfully requests that the Administrative Law Judge sustain RCH's objections and strike those portions of DDPC's prefiled testimony that RCH has identified as objectionable for the reasons set forth above.

Respectfully submitted,

By: Trey Nesloney

Trey Nesloney
State Bar No. 24058017
Fred B. Werkenthin, Jr.
State Bar No. 21182015

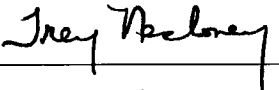
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**ATTORNEYS FOR ROCK CREEK
HOMEOWNERS**

CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2016, by my signature below, that a true and complete copy of RCH's Objections to Prefiled Direct Testimony of DDPC was served via email, facsimile, U.S. mail, and/or hand delivery to all parties of record as stated below.


Trey Nesloney

SERVICE LIST

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For Double Diamond Properties Construction Co.: <i>Via E-Mail</i> Ali Abazari Mallory Beck Jackson Walker, L.L.P. 100 Congress, Suite 1100 Austin, TX 78701 512-236-2239 512-391-2197 FAX aabazari@jw.com mbeck@jw.com	Public Utility Commission Legal Division: <i>Via E-mail</i> Michael Crnich Vera Dygert Attorney-Legal Division Public Utility Commission of Texas 1701 N. Congress Ave. STE 8-110 P.O. Box 13326 Austin, Texas 78711-3326 512-936-7230 512-936-7268 FAX michael.crnich@puc.texas.gov vera.dygert@puc.texas.gov