SOAH DOCKET NO. 582-08-0698
TCEQ DOCKET NO. 2007-1708-UCR

APPLICATION OF DOUBLE DIAMOND UTILITIES COMPANY, INC., CCN NO. 12087, TO CHANGE ITS WATER RATES AND TARIFF IN HILL, PALO PINTO, AND JOHNSON COUNTIES	§ § § § § §	**BEFORE THE STATE OFFICE** **OF** **ADMINISTRATIVE HEARINGS**

2009 JUL 6 PM 12: 29
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

WHITE BLUFF SUBDIVISION RATEPAYERS'
REPLY TO DDU'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

The White Bluff Subdivision Ratepayers (the "WBSR") hereby files this Reply to the Exceptions filed by Double Diamond Utilities Co. ("DDU"). The WBSR does not generally take issue with the ED's Exceptions and, therefore, replies only to DDU's Exceptions. In summary, the WBSR's Reply addresses the following points regarding DDU's Exceptions:

1. Consolidation of three dissimilar systems under one tariff;
2. DDU's inability to correctly account for developer contributions; and
3. DDU's failure to demonstrate a lack of financial integrity.

With respect to the other issues and calculations addressed in DDU's Exceptions, the WBSR believes that its Closing Argument addresses these items sufficiently and the WBSR will not, therefore, address these items further in this brief.

I. Consolidation of Three Different Systems Under One Tariff

DDU has presented no evidence that its three water systems are similar in any way. On the other hand, the WBSR and the ED presented evidence that DDU's three water systems are completely dissimilar. In an attempt to surmount its failure in meeting its burden of proof, DDU now attempts to rely on the decision in TCEQ Docket Nos. 2004-1120-UCR and 2004-1671-UCR, *Application by Aqua Development Company and Aqua Utilities, Inc. d/b/a Aqua Texas, Inc. to Change Water and Sewer Tariffs and Rates in Various Counties* (the "Aqua Texas Case") to explain how, despite its failure to meet its burden and evidence directly to the contrary, its

systems may be consolidated under a single tariff. DDU's reliance on this case is misplaced because DDU's interpretation of the case is incorrect and the Aqua Texas Case is not comparable to the case at hand. Further, even under DDU's own interpretation, it has failed to present evidence to demonstrate that its systems will ever achieve any sort of similarity.

A. DDU interpreted the Aqua Texas Case incorrectly.

DDU would apparently have us believe that based upon the Aqua Texas Case, *any* utility owning *any* water systems should be able to combine them under a single rate structure. DDU entirely ignores the discussion in the Proposal for Decision in the Aqua Texas Case regarding the policy for regionalization. This PFD acknowledges the problems of "mom and pop" stand-alone utilities and the goal of regionalization to correct those problems. However, the PFD *never* says that *all* stand-alone systems should be consolidated, and the PFD specifically acknowledges that the Aqua Texas systems are more similar than dissimilar.[1] DDU completely ignores the fact that an extensive evidentiary analysis must occur to make a determination of similarity. Additionally, the concept of regionalization assumes the consolidation of systems across a region – *many* systems sharing costs where the addition of a new system that will not vastly impact the rates of existing ratepayers, not a handful of vastly different systems.

B. The facts in the Aqua Texas Case are not comparable to the facts in this case.

The ALJs in the Aqua Texas Case took great pains to note the details regarding the Aqua Texas systems: 335 existing systems serving about 100,000 water customers and 38,000 sewer customers.[2] In contrast, DDU has three systems serving a little over 800 connections. Consolidation of the Aqua Texas systems is, therefore, of a completely different magnitude than consolidation in the case of the DDU systems. One goal of regionalization is to lessen rate shock to customers. Regionalization for the Aqua Texas systems may indeed be able to prevent rate shock to certain customers, while not dramatically affecting other customers. This is because the Aqua Texas customer base is so large that adding a new and more expensive system will not

[1] Aqua Texas Case, Proposal For Decision at p. 38.
[2] Aqua Texas Case, Proposal For Decision at pp. 15-16 and 31.

create a very large change in rates when the increased cost is shared over so many customers. Consolidation in a case like DDU's, however, would actually multiply the rate shock felt by customers of older systems. The customers of the oldest system would certainly have experienced some rate shock when they first began paying rates when their system was new and their community small; however, these same customers, if forced to subsidize each new development, would experience rate shock *each time* a new system is added and they are forced to bear part of the costs of the new system -- *in addition to* the costs of their own system. This is because, with only a handful of water systems, there are simply not enough customers to absorb the additional costs of new system development without these customers experiencing a major impact to their rates each time a new system is added. It is fairer in this situation for the customers of each development to bear the costs of only their systems.

The ALJs in the Aqua Texas Case also described, based on extensive evidence presented, the similarities of those systems in great detail and conclude, "when viewed in terms of the universe of potential system types, Aqua Texas' facilities are substantially similar in that they are designed to offer the bottom tier of 'municipal services.'"[3] The ALJs noted that, "[t]he systems themselves are 'very simple, rudimentary' and do not offer options like superfiltration or, in general, surface water treatment facilities."[4] DDU's systems, on the other hand, are not like these. The White Bluff water system is a groundwater system using gaseous chlorination. The Retreat is a groundwater system using hypo-chlorination. The Cliffs is a surface water system which uses mostly reverse osmosis to treat its water. These three systems are not of the same general type when compared to one another.

Finally, due to the scale of Aqua Texas, it is more reasonable to determine that the Aqua Texas systems are similar, despite their differences, than in DDU's case. The dissimilarities simply have a much greater impact when there are far fewer customers. What may seem similar in the Aqua Texas context is not at all similar in the DDU context because the effects on customers' rates are significant if the three systems are combined. It is possible to make generalizations about the Aqua Texas facilities, simply because there are so many of them. Not

[3] Aqua Texas Case, Proposal For Decision at p. 38.
[4] Aqua Texas Case, Proposal For Decision at pp. 28-29.

so for DDU's facilities. While no two systems are ever exactly alike, the differences among the three DDU systems are incredibly significant given the small number of customers DDU serves.

C. DDU presented no evidence to support a finding of similarity under its interpretation.

Under DDU's interpretation of the Aqua Texas case, the only factor of importance is whether the costs of service of the systems to be consolidated would be similar "in broad context over time."[5] However, DDU failed to provide a single piece of evidence or testimony that the systems would, in fact, have a similar cost of service at *any* point in the future. DDU, itself, is apparently entirely unsure as to whether the Retreat will ever grow to develop like the White Bluff system. According to Mr. Gracy's pre-filed testimony, the three developments served by DDU are resort-style communities, and there has not been a dramatic increase in the number of customers over the years.[6] Mr. Gillespie, DDU's consultant, stated as justification for DDU's requested return that DDU systems are low-growth.[7] However, during rebuttal testimony, Mr. Gracy stated that the Retreat is "not identical to White Bluff and the Cliffs"[8] and that the Retreat is expected to grow within three to four or seven to eight years.[9]

Additionally, DDU provides no evidence about how the three systems are actually similar in terms of type or quality of service. In the Aqua Texas Case, on the other hand, the ALJs discuss the extensive evidence regarding system similarity for many pages of the PFD.[10] This discussion could not exist in the PFD for this case because of the simple fact that there is no evidence to reference in the PFD.

Finally, even though DDU purports to have separate rates for the Cliffs, DDU does not have the accounting in place to accurately assign costs among the systems and, therefore, the White Bluff system is effectively subsidizing both the Retreat and the Cliffs, even with the separate rates DDU has set for the Cliffs.

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[5] DDU's Exceptions at p. 4.
[6] APP Ex. B at 2
[7] Tr. at 109 (ll. 2-4) (February 23, 2009)
[8] Tr. at 297 (ll. 3-4) (February 24, 2009)
[9] Tr. at 290 (ll. 17-21) (February 24, 2009)
[10] Aqua Texas Case, Proposal For Decision at pp. 28-45.

II. DDU's Inability to Correctly Account for Developer Contributions

It is interesting to note that DDU's first attempt at an explanation of the variance in DDU's numbers for developer contributions occurs in DDU's exceptions to the ALJ's proposal for decision.[11] DDU witnesses were unable to account for the differences at the hearing, and DDU made no mention of this in its closing arguments or replies to closing arguments. Any explanation of the discrepancy at this point is not supported by evidence provided at hearing and is inherently suspect given the wild variability of numbers provided in various DDU documents. The WBSR believes, therefore, that the ALJ is completely justified in denying the application solely on the basis of these significant discrepancies or, in the alternative, using the highest number available in DDU documentation as the appropriate number for developer contributions.

III. DDU's Failure to Demonstrate Lack of Financial Integrity

DDU complains that while it demonstrated that the company as a whole had experienced losses, the ALJ would not recognize these losses due to the fact that DDU did not separate its water and sewer expenses. However, this is not the only concern with DDU's statements and proffered evidence about its financial integrity. As explained in the WBSR's closing argument,

(1) DDU's numbers are extremely questionable;

(2) it appears that its stated losses may be paper losses only; and

(3) the length of time DDU waited to request a rate increase despite claimed losses for the past several years makes its stated need for increased revenue questionable.[12]

Additionally, given the claimed experience level of DDU's officers and staff, DDU should certainly have been able to manage its expenses and should have requested rate increases sooner if really needed. DDU is not a small "mom and pop" operation; it is a utility with many staff members. It is not acceptable or believable that such a utility would claim that it needs more money but then fail to provide documentation that actually supports its rate request. Finally, DDU already has another rate application pending with new rates in effect since December of

[11] DDU's Exceptions at pp. 7-8.
[12] WBSR's Closing Argument at pp. 36-37.

2008. If DDU indeed needs additional revenue, perhaps it will provide correct documentation in this rate case.

IV. Conclusion

Wherefore, premises considered, the WBSR respectfully requests that DDU's application be denied, refunds issued as recommended by the ED and ordering paragraphs added as recommended in the WBSR's Exceptions to the PFD.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th of July, 2009, a true and correct copy of the foregoing document was sent by first class, agency mail, hand delivery, and/or facsimile to the persons listed below.

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