

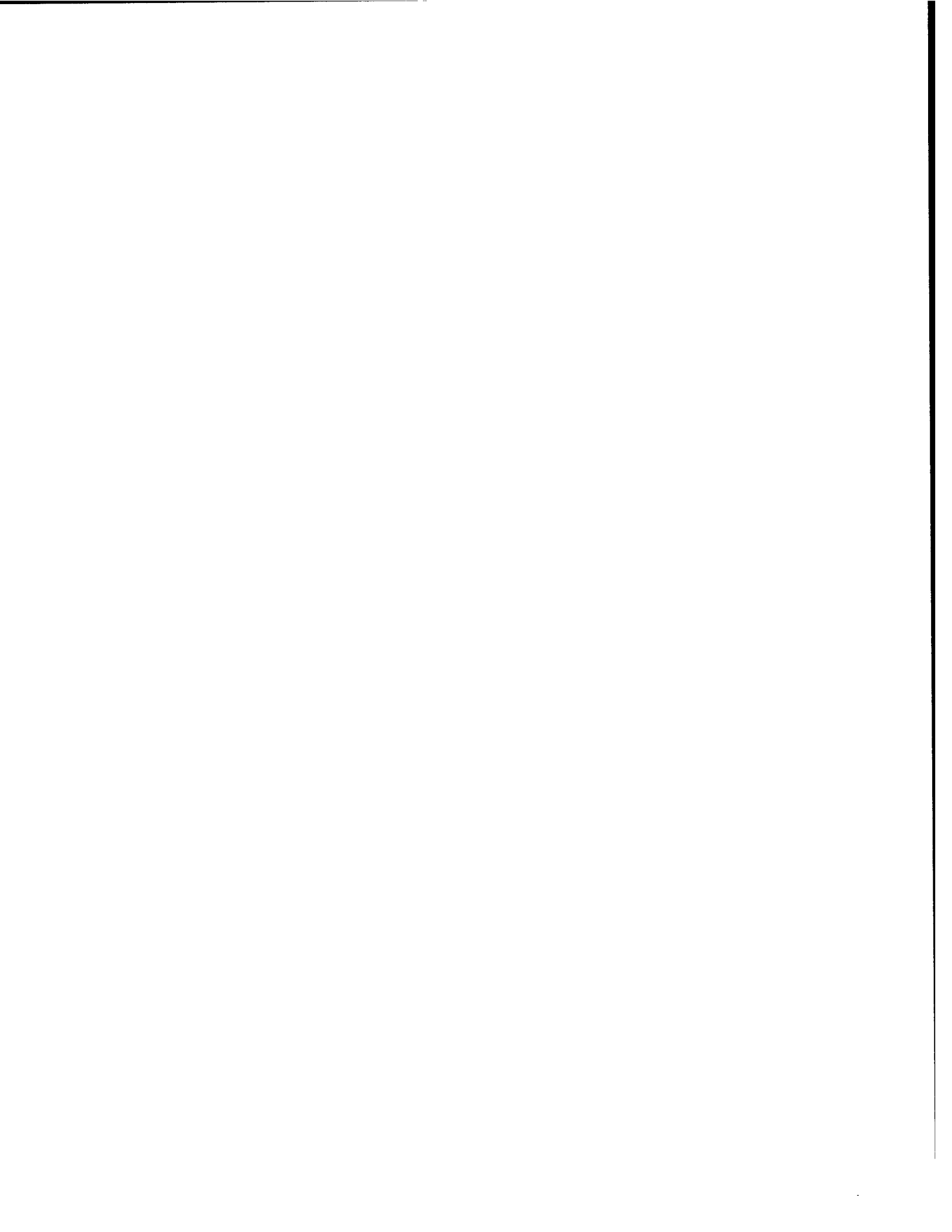


Control Number: 42919



Item Number: 12

Addendum StartPage: 0



SOAH DOCKET NO. 473-15-0372
PUC DOCKET NOS. 42919 and 42920

RECEIVED

PUBLIC UTILITY COMMISSION
FILING CLERK OFFICE

BEFORE THE STATE OF
OF
ADMINISTRATIVE HEARINGS

APPLICATION OF DOUBLE §
DIAMOND UTILITIES CO. FOR §
A WATER AND SEWER RATE §
/TARIFF CHANGE (37752-R AND §
37753-R) §

JOINT MOTION TO ABATE AND REMAND

TO THE HONORABLE JUDGE BENNETT:

COMES NOW Double Diamond Utilities Company (Applicant) in SOAH Docket No. 473-15-0372 and files this Motion to Abate and Remand. In support of this Motion, Applicant respectfully shows the following:

1. On October 13, 2013, Applicant filed its applications to change its water and sewer tariffs and rates that are the subject of Public Utility Commission of Texas (PUC) Control Nos. 42919 and 42920 (formerly TCEQ Docket No. 2014-0619-UCR and TCEQ Application Nos. 37752-R and 37753-R)(the "Applications"). The Applications were filed with the Texas Commission on Environmental Quality (TCEQ). The staff of the TCEQ found the Applications deficient and required additional information to be submitted by the Applicant. On December 3, 2013, staff of the TCEQ advised Applicant that the Applications were complete and it could begin charging its new rates on January 1, 2014. Subsequently, the TCEQ received complaints from more than 10% of the ratepayers, thus initiating the contested case hearing process.

2. In June 2014, Applicant and The Retreat Homeowners Group (TRHG) settled their issues in the Applications.

3. The Settlement Agreement, which is attached hereto as Exhibit "A", was fully executed by Applicant and the authorized representatives of TRHG as of June 30, 2014.

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4. As identified in the Application, The Retreat utility systems have 86 customers, and there were 39 customers who filed protest letters in this case. All but five of the individuals filing protests authorized TRHG to withdraw their protests and settle with Applicant. The documents that authorized the representatives of TRHG to settle this case and withdraw the protests, are attached as Exhibit "B".

5. On September 1, 2014, jurisdiction under Texas Water Code §§ 12.013 and 13.043(f) was transferred from the TCEQ to the PUC. On September 24, 2014, the PUC's Director of Commission Advising and Docket Management referred the applications to the State Office of Administrative Hearings (SOAH) for assignment of an Administrative Law Judge to conduct a hearing and prepare a Proposal for Decision.

6. Applicant filed a Joint Notice of Settlement, Petition for Withdrawal of Protests and Motion for Remand on September 26, 2014.

7. The Judge issued Order No. 1 Regarding Preliminary Hearing/prehearing Conference on October 1, 2014.

8. Applicant and TRHG request that the Judge abate and subsequently remand the case to the PUC so that the PUC can issue an order approving the Application as set forth in the Settlement Agreement.

WHEREFORE, PREMISES CONSIDERED, Petitioners pray the following:

1. Double Diamond Utilities Company and The Retreat Homeowners Group hereby request that Judge to issue an order abating this proceeding to allow the staff of the Commission to review the settlement and prepare the necessary paperwork to approve the settlement and to subsequently issue an order remanding Double Diamond Utilities Company's Application for water and sewer rate/tariff increases for approval by the Commission as set forth in the attached Settlement Agreement.

Respectfully submitted,



JOHN J. CARLTON
State Bar No. 03817600
The Carlton Law Firm, P.L.L.C.
2705 Bee Cave Road, Suite 200
Austin, Texas 78746
Telephone: (512) 614-0901
Fax: (512) 900-2855
Attorney for Double Diamond Utilities Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered via email, as agreed to by all parties, and via facsimile, via first class mail or by hand delivery on the 2nd day of October, 2014.



JOHN J. CARLTON

EXHIBIT "A"

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is by and between Double Diamond Utilities, Co. ("DDU") and The Retreat Homeowners Group (TRHG) regarding DDU's water (Application No. 37752-R) and sewer (Application No. 37753-R) rate applications (the "Applications")

RECITALS

WHEREAS, the TRHG members are homeowners within The Retreat Subdivision in Johnson County, Texas, who have protested the Applications; and

WHEREAS, DDU is an investor-owned, retail public water and sewer utility operating under state issued certificates of convenience and necessity, which provides retail water and wastewater utility service to The Retreat Subdivision and other areas; and

WHEREAS, on October 15, 2013, DDU filed a water rate/tariff change application with the Texas Commission on Environmental Quality ("TCEQ") (Application No. 37752-R); and

WHEREAS, on October 15, 2013, DDU filed a sewer rate/tariff change application with the TCEQ (Application No. 37753-R); and

WHEREAS, the TCEQ is the regulatory authority under Tex. Water Code § 13.042(e) having original jurisdiction over the water and sewer rates of DDU within The Retreat Subdivision, and

WHEREAS, DDU's rate change application to TCEQ affecting the water and wastewater rates charged in the The Retreat Subdivision was protested by the requisite number of customers to initiate proceedings on that application pursuant to Tex. Water Code §13.043, and

WHEREAS, TCEQ has referred the customers' appeal to the State Office of Administrative Hearings ("SOAH") and

WHEREAS, TRHG and DDU mutually desire to resolve the dispute between them regarding water and sewer service, rates and other matters; and

WHEREAS, TRHG and DDU mutually desire to enter into this Agreement setting forth the terms and conditions pursuant to which TRHG and its members will agree to the Settlement Rates, and withdraw its protest of DDU's rate change applications at SOAH and the TCEQ, and DDU will agree to the Settlement Rates for The Retreat Subdivision and will agree to undertake certain other obligations as described herein.

NOW, THEREFORE, in consideration of the promises, mutual agreements, and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in settlement of disputed claims, TRHG and DDU hereby contract and agree as follows

ARTICLE I.
SETTLEMENT RATES

1.1 TRHG and DDU agree to the Settlement Rates and terms set forth in Exhibit "A" for the period of July 1, 2014, through December 31, 2016. The Settlement Rates will be adopted as part of a stand alone tariff for the The Retreat Subdivision water and wastewater systems and will include a 12,000 gallons per month cap on sewer volumetric bills

1.2 DDU will charge the Settlement Rates effective July 1, 2014, and will begin billing the Settlement Rates with its August bills, which are based on July consumption

1.3 DDU will not file an application that increases water and sewer rates and fees for The Retreat Subdivision before an effective date of January 1, 2017.

ARTICLE II.
MISCELLANEOUS

2.1 No agreements other than this Agreement now exist between TRHG and DDU concerning the subject matter of this Agreement

2.2 This Agreement shall be binding on the TRHG individual's (including their agents and representatives), DDU's Retreat Subdivision water and wastewater customers who authorized TRHG individuals to represent them in these matters ((Application No. 37752-R (water) and (Application No. 37753-R (sewer)) and DDU (including its officers, directors, employees, agents and representatives) and shall be binding on and inure to the benefit of the successors and assigns of the respective parties to this Agreement

2.3 This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof. No modifications of this Agreement shall be of any force or effect whatsoever except as by subsequent modification in writing signed by the parties

2.4 The provisions of this Agreement shall be governed by and construed and entered in accordance with the substantive laws of the State of Texas. Any action at law or in equity brought to enforce any provision of this Agreement shall be brought in a court of competent jurisdiction with venue in Travis County, Texas

2.5 In the event of a default hereunder by any Party, the other Party shall be entitled to seek damages, specific performance, injunctive relief, or any other remedy to which it might be entitled in law or equity

2.6 If any provision in this Agreement shall for any reason be invalid, illegal or unenforceable in any respect, by the TCEQ or a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been continued herein and in lieu thereof shall be substituted a new provision (including new substitute settlement rates) that is as near to the intent of the parties without being invalid, illegal or unenforceable

2.7 In the event any provision of this Agreement is challenged as unenforceable by the TCEQ or any other party, TRHG will cooperate and participate in the defense of this Agreement both before the TCEQ and, if necessary, in any related judicial action.

2.8 The parties hereto covenant and agree that they shall take necessary steps to assist in the adoption/approval of the Settlement Rates by the TCEQ and shall execute and deliver such other and further instruments and documents as are or may have come necessary or convenient to effectuate and carry out the interest of the Agreement.

2.9 This Agreement may be executed in multiple originals, either copy of which shall be considered an original

2.10 This Agreement shall be effective on the date of execution below.

2.11 The signatories hereto represent and affirm that they have the authority to execute and bind the Parties on whose behalf they sign below

2.12 The parties agree that nothing in this Agreement shall create any third party beneficiary rights for any persons

2.13 In the event of any suit between TRHG and DDU to enforce or interpret the terms of this Agreement, the prevailing Party shall recover its reasonable attorneys' fees and costs incurred in resolving the suit from the nonprevailing Party

2.14 Nothing in this Agreement may be used as an admission in any litigation or other contested matter, except to enforce the terms of this Agreement.

2.15 No party will be penalized for alleged authorship of a particular provision on judicial construction of this Agreement

2.16 No Party to this Agreement shall initiate any litigation or arbitration challenging the validity or enforceability of any provision of this Agreement once it has been signed. The Parties reserve only their right to enforce the terms of this Agreement to the extent they are not fully performed by any other party

(signatures are on following page)

EXECUTED AND AGREED TO by the parties hereto this 30th day of June, 2014

THE RETREAT HOMEOWNERS GROUP

Jack D. McCartney
Printed Name: JACK D. MCCARTNEY

Billie Huskey
Printed Name: BILLIE HUSKEY

Wayne K. Callaway
Printed Name: WAYNE K. CALLAWAY

John P. Russett
Printed Name: JOHN P. RUSSETT

Carrie B. Williams
Printed Name: CARRIE B. WILLIAMS

DOUBLE DIAMOND UTILITIES, CO.

Randy Gracy
Randy Gracy, President

EXHIBIT A
RATE SHEETS
(see attached)

Double Diamond Utilities, Inc. Water and Sewer Settlement Rates The Retreat

	<u>Current</u>	<u>Settlement</u>
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Water

Meter Charge			
3/4" or Less	\$	39.00	\$ 49.60
1"		97.50	124.01
1 1/2"		195.00	248.02
2"		312.00	396.84
3"		585.00	744.07

Volumetric Charge (per 1,000 gal)			
0 - 3,000	\$	2.00	\$ 2.54
3,001 - 10,000		2.75	3.50
10,001 - 15,000		3.80	4.83
15,001 - 20,000		5.25	6.68
20,001 +		7.25	9.22

Sewer

Meter Charge			
3/4" or Less	\$	48.00	\$ 67.12
1"		120.00	167.80
1 1/2"		240.00	335.59
2"		384.00	536.95
3"		720.00	1,006.78

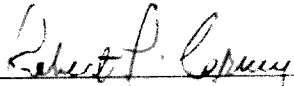
Volumetric Charge (per 1,000 gal)			
0 - 3,000	\$	-	\$ -
3,001 - 12,000		8.00	11.19
12,001 +		8.00	-


SETTLEMENT AUTHORIZATION

Double Diamond Utilities, Inc. (DDU), the investor-owned, retail public water and sewer utility operating under state issued certificates of convenience and necessity provides retail water and wastewater utility service to property owners residing in The Retreat residential development (The Retreat) in Johnson County, Texas. On October 15, 2013, DDU filed a water rate/tariff change application (Application No. 37752-R) and a sewer rate/tariff change application (Application No. 37753-R) with the Texas Commission on Environmental Quality (TCEQ). The TCEQ is the regulatory authority under Texas Water Code § 13.042(e) having original jurisdiction over the water and sewer rates of DDU within The Retreat. Subsequently, I (We) the undersigned filed a written protest with TCEQ to DDU's water and sewer rate change applications pursuant to Texas Water Code §13.043.

On February 25, 2014, DDU met with interested water and sewer customers at The Retreat to present information on the rate change applications. In the course of the presentation by DDU and an open discussion with those present, DDU indicated it was willing to enter into settlement negotiations to avoid a contested hearing. Following the presentation and discussion, those present agreed that a settlement with DDU should be pursued through a Committee of The Retreat Homeowners Group (TRHG), an interest group formed in response to previous DDU rate change applications. Operating Committee members were elected and directed to enter into settlement negotiations with DDU. Mutually agreeable settlement terms were negotiated and approved at a called meeting of residential customers from The Retreat on June 10, 2014. A Settlement Agreement was drafted by DDU and following review by TRHG Committee members was executed on June 30, 2014 and returned to DDU for execution and filing with TCEQ.

I (We) the undersigned, hereby authorize the duly elected TRHG Committee members Jack D. McCartney, Billie Huskey, Wayne K Calloway, John P. Robertson, Jim Shakleford and Carrie B Williams (an alternate member empowered to act in the absence of a regular member) to execute said settlement agreement with DDU and withdraw my (our) protest and hearing request regarding the water and sewer rate increases proposed in TCEQ Docket Number 2014-0619-UCR and Application Numbers 37752-R and 377523-R


Printed Name Robert Cracy



Printed Name Jim Cracy

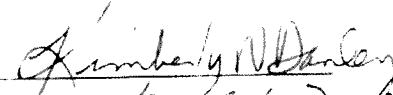
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Printed Name Darin Dawley

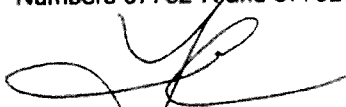

Printed Name Kimberly Dawson

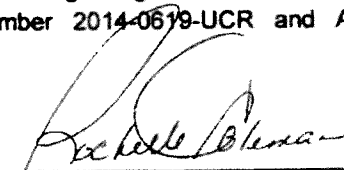
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Printed Name LARRY FAHNEY


Printed Name ROCHELLE COLEMAN

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Printed Name JOHN FISHER


Printed Name _____


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Printed Name Randy T. Fowler


Printed Name Karen L. Fowler

SETTLEMENT AUTHORIZATION

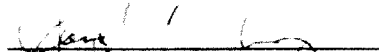
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Printed Name Michael Keene



Printed Name Joyce Cooksey

SETTLEMENT AUTHORIZATION

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On February 25, 2014, DDU met with interested water and sewer customers from The Retreat to present information on the rate change applications. In the course of the presentation by DDU and an open discussion with those present, DDU was made aware of the willingness of those present to enter into settlement negotiations to avoid a contested hearing. In the presentation and discussion, those present agreed that a settlement would be pursued through a Committee of The Retreat Homeowners Group. An interest group formed in response to previous DDU rate change applications. Committee members were elected and directed to enter into settlement negotiations with DDU. Mutually agreeable settlement terms were negotiated and presented at a public meeting of residential customers from The Retreat on June 10, 2014. A Settlement Agreement was drafted by DDU and following review by The Retreat Homeowners Group members was executed on June 30, 2014 and returned to DDU for execution with TCEQ.

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Carla
Printed Name CARLA

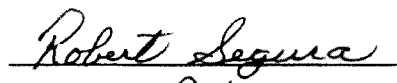
Brynla
Printed Name BRYNLA A SKI

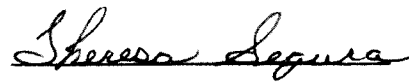
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Printed Name Robert Segura



Printed Name Theresa Segura

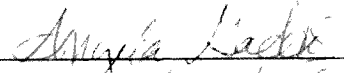
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Printed Name Kevin Gaddis


Printed Name Angela Gaddis

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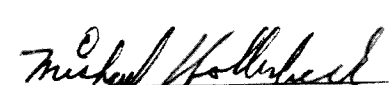
 
Printed Name MAX BRYAN FITZHUGH Printed Name BRENDA G. FITZHUGH

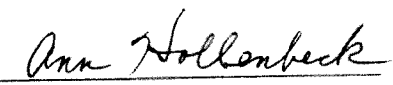
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Printed Name MICHAEL HOLLENBECK



Printed Name ANN HOLLENBECK

SETTLEMENT AUTHORIZATION

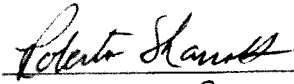
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Printed Name WILLIAM SHARRATT



Printed Name Roberta Sharratt

SETTLEMENT AUTHORIZATION

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DDJ the undersigned hereby authorizes the following TCEQ Committee members Jack D. McCartney Billie Huskey Wayne K. Carloway John P. Robertson Jim [unclear] and [unclear] to execute said settlement agreement with DDJ and to appear on DDJ's behalf and hearing request regarding the water and sewer rate change applications (Application Numbers 37753-P and 37753-R).


[Handwritten Signature]
[unclear name]
[Handwritten Signature]
Carrie B. Williams
Carrie B. Williams

SETTLEMENT AUTHORIZATION

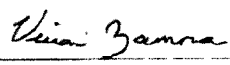
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Printed Name Neil Norwood
8/20/14



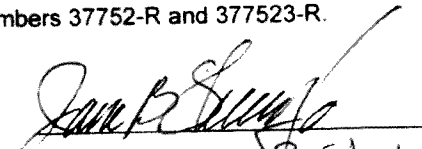
Printed Name Vivian Zamora
8/20/14

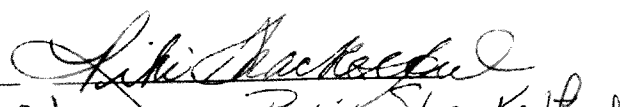
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Printed Name Jim B. Shackelford


Printed Name Rick Shackelford

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Printed Name ARTHUR L. ANDERSON

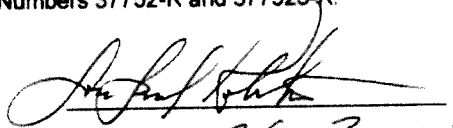

Printed Name Joyce E Anderson

SETTLEMENT AUTHORIZATION

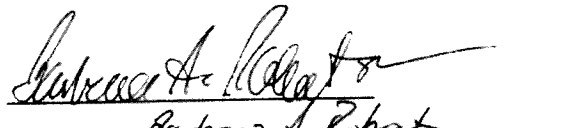
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Printed Name Tom Fred Robertson



Printed Name Barbara A. Robertson

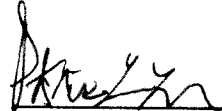
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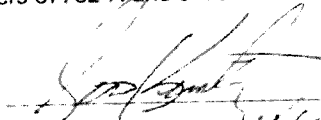
Printed Name RANDALL D. LARGE Printed Name PATRICIA L. LARGE

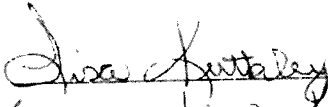
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Printed Name Scott Kartley

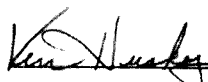

Printed Name LISA BEITHLEY
6021 Montrose Ct E
CLEBURNE TX 76033

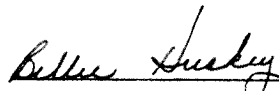
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Printed Name VERNON HUSKEY



Printed Name Billie Huskey

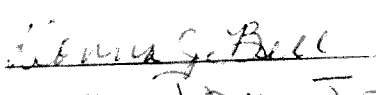
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Printed Name John T. Bell


Printed Name Terra J. Bell

SETTLEMENT AUTHORIZATION

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Printed Name Timothy G. McKenna


Printed Name Judy A. McKenna

8/24/2014

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[Handwritten Signature]
Printed Name _____

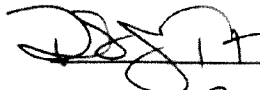
[Handwritten Signature]
Printed Name Judith Camp

SETTLEMENT AUTHORIZATION

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Printed Name REBECCA J. PRESTON Printed Name _____

SETTLEMENT AUTHORIZATION

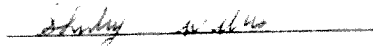
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Printed Name William R. Willis




Printed Name SHIRLEY WILLIS

SETTLEMENT AUTHORIZATION

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Printed Name PAULA KELLAN



Printed Name STEVE MAPLES

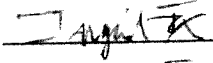
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Printed Name WILLIAM FOX


Printed Name INGRID FOX

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William Marceni

Printed Name WILLIAM
MARCENI

Lisa Marceni

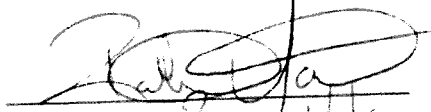
Printed Name LISA MARCENI

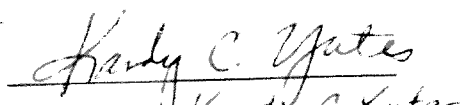
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Printed Name Robert Yates



Printed Name Kandy C Yates


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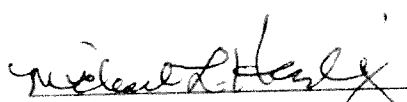

Printed Name Sandra A. McCartney

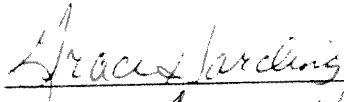
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Printed Name Michael L. Healy

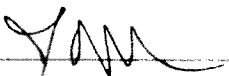

Printed Name Grace Harding


SETTLEMENT AUTHORIZATION

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Printed Name John Cox


Printed Name Jennifer Cox

SETTLEMENT AUTHORIZATION

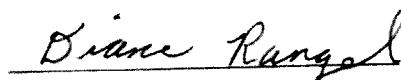
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Printed Name Simon RANGEL



Printed Name Diane Rangel

SETTLEMENT AUTHORIZATION

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Michael S. Valle
Printed Name Michael S. Valle

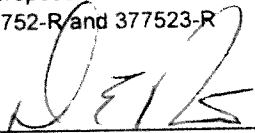
Caroline P. Valle
Printed Name Caroline P. Valle

SETTLEMENT AUTHORIZATION


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I (We) the undersigned, hereby authorize the duly elected TRHG Committee members Jack D. McCartney, Billie Huskey, Wayne K. Calloway, John P. Robertson, Jim Shackleford and Carrie B. Williams (an alternate member empowered to act in the absence of a regular member) to execute said settlement agreement with DDU and withdraw my (our) protest and hearing request regarding the water and sewer rate increases proposed in TCEQ Docket Number 2014-0619-UCR and Application Numbers 37752-R and 377523-R.



Printed Name DEREKE E. REITH



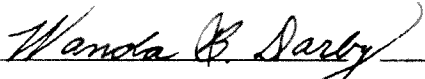
Printed Name Kim C. Roth


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Printed Name WANDA B. DARBY

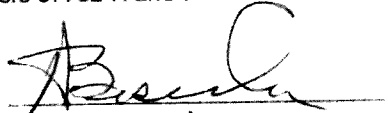

Printed Name JOHN E. DARBY

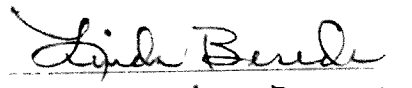
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Printed Name A BESEDA


Printed Name Linda Beseda

SETTLEMENT AUTHORIZATION

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Billy E Barnes

Printed Name BILLY E. BARNES

Linda Barnes

Printed Name LINDA BARNES

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6525 *Jody Butcher*
Printed Name Jody Butcher Printed Name Jody Butcher