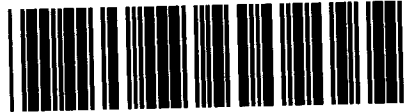


Control Number: 43922



Item Number: 29

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014

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PUBLIC UTILITY COMMISSION
SOAH DOCKET NO. 582-09-4288
TCEQ DOCKET NO. 2009-0505-UCR

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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

APPLICATION OF DOUBLE § BEFORE THE STATE OFFICE
DIAMOND UTILITIES COMPANY, §
INC. TO CHANGE WATER RATE § OF
TARIFF FOR SERVICE IN HILL, §
PALO PINTO, AND JOHNSON § ADMINISTRATIVE HEARINGS
COUNTIES §

White Bluff Subdivision Ratepayers' Response to DDU's First Motion for Continuance

The White Bluff Subdivision Ratepayers (the "WBSR") hereby file this Response to Double Diamond Utility Company's ("DDU") First Motion for Continuance. DDU requested in its motion that it be allowed at least 75 additional days in order to have its new attorney prepare testimony in this case. In this response, the WBSR requests that DDU's motion be denied for the reasons that follow.

1. DDU has not been without assistance during the pendency of this proceeding. As evidenced by the cover of DDU's rate application, the application was prepared by J. Stowe & Co., outside consultants who specialize in water rates issues. Further, even at the time Mr. Zeppa appeared as counsel in this case, the notice provided that Mr. Abazari, former DDU lead counsel, would still function as co-counsel.
2. DDU should have been fully aware of the testimony deadlines in this case at the time it hired Mr. Zeppa as lead counsel. The procedural schedule in this case was developed by agreement of all parties. At the time DDU retained Mr. Zeppa, Mr. Abazari remained as co-counsel. DDU has not presented any evidence that Mr. Abazari was unable to assist in the preparation of this case. Certainly, given the upcoming testimony deadline, DDU should have been working to ensure that its direct case would be ready to file, relying on whichever consultants and counsel were available to it at the time.
3. The final order in Docket No. 2007-1708-UCR is no surprise to DDU. The proposal for decision in this prior water rate case was issued June 15, 2009.¹ The TCEQ Commissioners heard oral argument on this case on October 7, 2009. With few changes,

¹ That PFD is available online here: <http://www.soah.state.tx.us/pfdsearch/pfds/582/08/582-08-0698-pfd1.pdf>.

the Commissioners accepted the PFD, denying DDU's requested rate increases.² DDU, therefore, knew as early as October 7, 2009 (and certainly had a reason to believe before) that the items in the PFD were going to be an issue for DDU in its later rate case. That DDU now claims that the determinations made in this docket will have a *significant impact* on its case in this docket also speaks volumes about the likelihood, or lack thereof, that DDU will be able to adequately support its application in this docket. For example, the final order in Docket No. 2007-1708-UCR contained findings that the three water systems at issue in both that case and the current rate case "are different in terms of age, size, type of development served, cost of service and sources of water," and that, "DDU should have prepared three separate revenue requirements for three separate water systems."³ The rates at issue in this proceeding are structured in the same way as the rates at issue in the prior proceeding (combined revenue requirement). In order to adequately address the issues set forth in the final order, the most reasonable approach would appear to be for DDU to withdraw its current application, refund the overcharges for rates collected in the interim and then file a rate application which actually addresses all of the concerns identified in that order. Instead, DDU still intends to litigate this application, and in fact, now apparently needs additional time to do so. Additional time may only delay the inevitable for this application. The WBSR, therefore, is opposed to any further delay.

4. The WBSR has experienced enough delay in the prior docket. As DDU acknowledges, the WBSR has already been involved in rate case litigation for a rate application filed in 2007. That case involved one agreed delay, and still, ultimately, the proposed rates were rejected. The WBSR no longer has tolerance for further delays. From the WBSR members' perspectives, rate litigation with DDU has been interminable. If DDU's motion is granted, the WBSR, through no fault of its members, may see additional time before they reach final resolution. In this proceeding, WBSR members want a final answer, as soon as possible.

² See Item 3 of the Marked Agenda here:


http://www.tceq.state.tx.us/assets/public/comm_exec/agendas/comm/2009/091007.mrk.pdf

³ Para. 43 and 44 of the final order.

While the WBSR strongly supports holding DDU to its original filing deadlines, if DDU's motion is granted, the WBSR requests that, going forward, monies collected over the amount of the TCEQ's last-approved rates be held in escrow pursuant to TCEQ Rule §291.30 pending the final disposition of the case. This will help ensure that DDU will not be motivated to seek further delay in the case and will make refunds of those amounts much easier to accomplish in the event that DDU is not fully successful in supporting its application.

Wherefore, premises considered, the WBSR respectfully requests that DDU's motion for continuance be denied.

MATHEWS & FREELAND, L.L.P.


By: 
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ON ENVIRONMENTAL
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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of December, 2009, a true and correct copy of the foregoing document was sent by first class, agency mail and/or facsimile to the persons listed below.



Shari Heino

CHIEF CLERKS OFFICE

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State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

December 11, 2009

Re: SOAH Docket No. 582-09-4288; TCEQ Docket No. 2009-0505-UCR, Application of Double Diamond Utilities Company, Inc. to Change Water Rate Tariff for Service in Hill, Palo Pinto, and Johnson Counties

To All Parties of Record:

This letter confirms that Order No. 3 in this preceding suspends the December 14th deadline for Applicant to file its written direct testimony.

Sincerely,

A handwritten signature in cursive script that reads "Richard R. Wilfong".

Richard R. Wilfong
Administrative Law Judge

RRW/sb
cc: Mailing List

TEXAS
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STYLE/CASE: DOUBLE DIAMOND UTILITIES COMPANY, INC
SOAH DOCKET NUMBER: 582-09-4288
REFERRING AGENCY CASE: 2009-0505-UCR

STATE OFFICE OF ADMINISTRATIVE HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ RICHARD WILFONG

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DATE: 12/11/2009

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 4

REGARDING: LETTER CLARIFYING ORDER NO. 3

DOCKET NUMBER: 582-09-4288

JUDGE RICHARD WILFONG

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VIA REGULAR MAIL

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