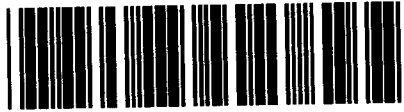


Control Number: 43922



Item Number: 30

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83<sup>rd</sup>  
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

RECEIVED

SOAH DOCKET NO. 582-90-1800-9 AM 9:54  
TCEQ DOCKET NO. 2009-0505-UCR

PUBLIC UTILITY COMMISSION  
FILING CLERK

APPLICATION OF DOUBLE  
DIAMOND UTILITIES COMPANY,  
INC. TO CHANGE WATER RATE  
TARIFF FOR SERVICE IN HILL,  
PALO PINTO, AND JOHNSON  
COUNTIES

§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

CHIEF CLERK'S OFFICE

2009 DEC -8 PM 12:15

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

DOUBLE DIAMOND UTILITIES COMPANY, INC.'S  
FIRST MOTION FOR CONTINUANCE

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Double Diamond Utilities Co., Applicant herein, and files this Motion for Continuance. In support of this Motion, Applicant will show the Court as follows:

I.

On or about October 22, 2009, Applicant met with and arranged for Mr Mark Zeppa to represent the company for the hearing. Mr. Zeppa did not file a Notice of Appearance until November 23, 2009, and has neither filed nor prepared any other documents, including the prefiled testimony due on December 14, 2009, for this case. Mr. Zeppa's services were terminated on December 3, 2009. See Affidavit of Jeff Schmidt, General Counsel for Double Diamond Delaware, incorporated herein for all purposes.

II.

On November 16, 2009, the Applicant received the Final Order on Applicant's Application for a rate increase in TCEQ Docket No. 2007-1708-UCR ("2007 Proceeding"). See Affidavit of Jeff Schmidt. The Commission heard the case on October 7, 2009, but a final order was not issued until November 12, 2009. The Final Order in the 2007 Proceeding included findings of fact and conclusions of law regarding rate base, operations and maintenance expenses and system consolidation that have a significant impact on Applicant's preparation of prefiled testimony in this case. Consequently, Applicant and its witnesses need additional time to evaluate the Final Order and prepare Applicant's prefiled testimony to be consistent with and address the findings and conclusions in the 2007 Proceeding.

III.

On December 3, 2009, Applicant retained John J. Carlton as counsel in this case. Mr. Carlton filed a Motion for Substitution of Counsel that same day. Mr. Carlton has conducted an initial review of the Applicant's application, the Final Order in the 2007 Proceeding, and various pleadings filed to date and conferred with Applicant's representatives and experts and representatives for various other parties in this case. As a result of that work, he determined that there is insufficient time to allow him to adequately review the file, including the case history and the records of the 2007 Proceeding, and prepare and file Applicant's prefiled testimony,

which is due on December 14, 2009. See Affidavit of John J. Carlton, Attorney for Double Diamond Utilities Co., incorporated herein for all purposes.

IV.

Applicant hereby requests at least a 75 day postponement of all the deadlines set forth in Order No. 1. Such continuance will allow the Applicant and its attorney additional reasonable time to prepare prefiled testimony and to prepare for the hearing.

V.

This is Applicant's first motion for continuance in this case and the first motion for continuance filed by any party in this case.

VI.

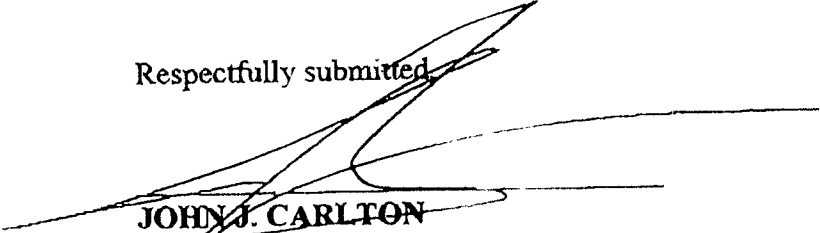
Upon granting of this Motion and no later than December 18, 2009, Applicant agrees to confer with the other parties to this case to submit three agreed alternative schedules for the remainder of the procedural schedule in this case. Applicant has conferred with the Executive Director's Attorney and reached agreement on a 78-day continuance that allows for a hearing on the merits at a time that the Executive Director's witnesses are available, June 2-4, 2010. Mr. Murphy, with the Office of Public Interest Counsel, has advised that he is unavailable for a hearing at that time, but is not opposed to a continuance of similar length

VII.

The continuance is not sought for delay but so that justice may be done

WHEREFORE, PREMISES CONSIDERED, Applicant respectfully requests that this Court enter an Order granting the Motion for Continuance and extending the deadlines set forth in Order No. 1 accordingly.

Respectfully submitted,



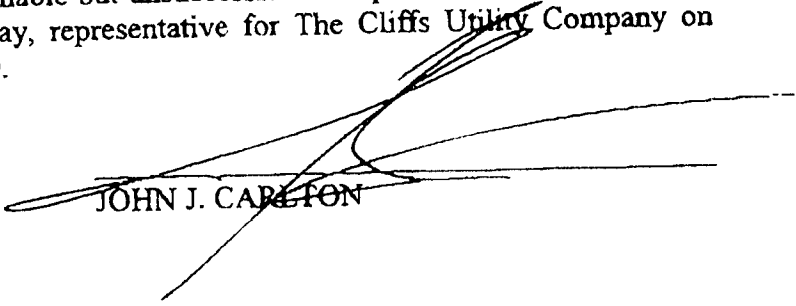
**JOHN J. CARLTON**  
State Bar No 03817600  
**ARMBRUST & BROWN, L.L.P.**  
100 Congress Avenue, Suite 1300  
Austin, Texas 78701-2744  
(512) 435-2300 – Telephone  
(512) 436-2360 – Telecopy

**ATTORNEY FOR DOUBLE DIAMOND  
UTILITIES CO.**

### CERTIFICATE OF CONFERENCE

I certify that I conferred with: Stefani Skogen, Staff Attorney with the Texas Commission on Environmental Quality, whose client does not oppose this Motion for Continuance; James Murphy, Attorney for the Office of Public Interest Counsel, who does not oppose this Motion; Jack D. McCartney, representative for The Retreat Homeowners Group, who currently opposes this Motion despite good faith negotiations; and, Shari Heino, Attorney for White Bluff Subdivision Ratepayers, whose clients oppose this Motion despite good faith negotiations.

I further certify that I made reasonable but unsuccessful attempts to confer by telephone and left voice messages with Phillip Day, representative for The Cliffs Utility Company on December 3, 2009 and December 7, 2009.

  
JOHN J. CARLTON

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was delivered via facsimile, via first class mail or by hand delivery on the 8<sup>th</sup> day of December, 2009 to the following:

State Office of Administrative Hearings

Richard Wilfong  
Administrative Law Judge  
300 West 15<sup>th</sup> Street  
Austin, Texas 78701  
Fax: (512) 475-4994

The Cliffs Utility Committee

Phillip Day  
Retired  
90 Glen Abbey Dr. S.  
Graford, Texas 76449

Texas Commission on Environmental Quality

Docket Clerk  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711  
Fax: (512) 239-3311

The Retreat Homeowners Group

Jack D. McCartney  
and John T. Bell, Retired  
6300 Annanhill St.  
Cleburne, Texas 76033

Stefanie Skogen  
Staff Attorney, MC 173  
Environmental Law Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711  
Fax: (512) 239-0606

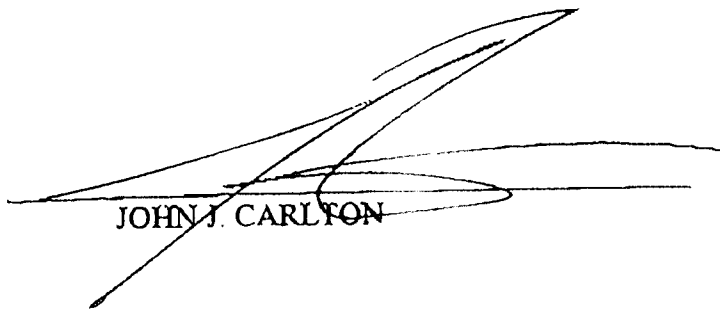
White Bluff Subdivision Ratepayers

Shari Heino  
Matthews & Freeland, L.L.P.  
327 Congress Ave., Suite 300  
Austin, Texas 78701  
Fax: (512) 703.2785

Office of Public Interest Counsel

James Murphy  
Texas Commission on Environmental Quality  
Office of Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711  
Fax: (512) 239-6377

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
2009 DEC - 8 PM 12: 15  
CHIEF CLERKS OFFICE



JOHN J. CARLTON

**AFFIDAVIT OF JEFF SCHMIDT**

STATE OF TEXAS §

COUNTY OF DALLAS §

Before me, the undersigned notary, on this day, personally appeared Jeff Schmidt. After I administered an oath to him, upon his oath, he said:

"My name is Jeff Schmidt. I am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

1. I am the general counsel for Double Diamond Delaware.

2. On behalf of Double Diamond Utilities Co. ("DDU"), I met with Mark Zeppa and requested that he represent DDU's interest in TCEQ Docket No. 2009-0505-UCR/SOAH Docket No. 582-09-4288 on or about October 22, 2009.

3. I understood that Mr. Zeppa was going to immediately begin work to prepare prefiled testimony and other documents for filing in TCEQ Docket No. 2009-0505-UCR/SOAH Docket No. 582-09-4288.

4. Mr. Zeppa did not file any pleadings or other documents until November 23, 2009, when he finally filed a Notice of Appearance, approximately one month after agreeing to represent DDU.

5. To the best of my knowledge and belief, Mr. Zeppa has done no other work to prepare for filing prefiled testimony or any other documents in TCEQ Docket No. 2009-0505-UCR/SOAH Docket No. 582-09-4288

6. I terminated Mr. Zeppa's services on December 3, 2009, 2009

7. I received a copy of the Final Order in TCEQ Docket No. 2007-1708-UCR on November 16, 2009.

8. On December 3, 2009, I first spoke with John J Carlton of Armbrust & Brown, L.L.P., and requested that he represent DDU in TCEQ Docket No. 2009-0505-UCR/SOAH Docket No. 582-09-4288.

Further, affiant sayeth not."

*Jeff Schmidt*  
JEFF SCHMIDT

ACKNOWLEDGED, SWORN TO and SUBSCRIBED before me by Jeff Schmidt on this the 8<sup>th</sup> day of December, 2009.



*Felicia A. Sias*  
Notary Public in and for the State of Texas  
My commission expires: November 8, 2012

**AFFIDAVIT OF JOHN J. CARLTON**

STATE OF TEXAS §

COUNTY OF TRAVIS §

Before me, the undersigned notary, on this day, personally appeared John J. Carlton, a person whose identity is known to me. After I administered an oath to him, upon his oath, he said:

"My name is John J. Carlton. I am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

1. I am an attorney with the law firm of Armbrust & Brown, L.L.P

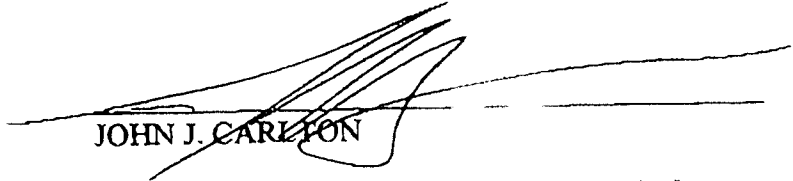
2. I was initially contacted by Double Diamond Utilities Co. ("DDU") regarding TCEQ Docket No. 2009-0505-UCR/SOAH Docket No. 582-09-4288 on December 2, 2009, and retained on December 3, 2009.

3. As new counsel for Applicant, I have determined that I need additional time to review the file and history of the case, including the file related to TCEQ Docket No. 2007-1708-UCR, in order to adequately prepare for the case and file prefiled testimony.


4. I am requesting a 75 day extension of the deadlines set forth in Order No. 1 to prepare Applicant's prefiled testimony for filing and prepare for the hearing on the merits in this case.

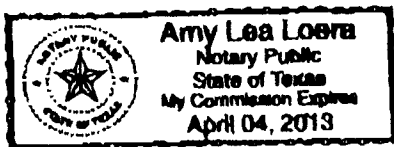
5. On December 4 and December 7, 2009, I conferred with Shari Heino, Attorney for White Bluff Subdivision Ratepayers, and Jack D. McCartney, representative for The Retreat Homeowners Group, in an unsuccessful effort to reach an agreement regarding a continuance.

Further, affiant sayeth not."

  
JOHN J. CARLTON

ACKNOWLEDGED, SWORN TO and SUBSCRIBED before me by John J. Carlton on this the 8<sup>th</sup> day of December, 2009.

  
Notary Public in and for the State of Texas  
My commission expires: \_\_\_\_\_



**ARMBRUST & BROWN, L.L.P.**

ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300  
AUSTIN, TEXAS 78701-2744  
512-435-2300

FACSIMILE 512-435-2360  
FACSIMILE 512-435-2399

JOHN J. CARLTON  
(512) 435-2308  
jcarlton@abaustrm.com

December 8, 2009

VIA FACSIMILE: (512) 475-4994

Richard Wilfong  
Administrative Law Judge  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78701

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

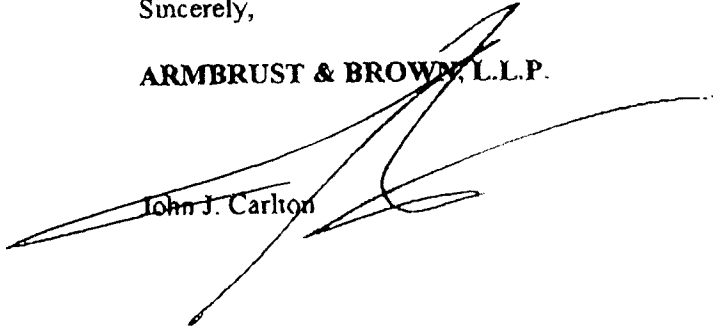
Dear Judge Wilfong

Enclosed for filing in the above referenced case is Double Diamond Utilities Co.'s First Motion for Continuance.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me

Sincerely,

**ARMBRUST & BROWN, L.L.P.**



John J. Carlton

Enclosure

cc: All Parties of Record

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 DEC - 8 PM 12: 15  
CHIEF CLERKS OFFICE



**ARMBRUST & BROWN, L.L.P.**  
ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300  
AUSTIN, TEXAS 78701-2744  
512-435-2300

FACSIMILE 512-435-2360

**FACSIMILE COVER PAGE**

Date: December 8, 2009

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 DEC - 8 PM 12: 15  
CHIEF CLERKS OFFICE

NAME:	COMPANY:	FACSIMILE NO.:	TELEPHONE NO.:
ALJ, Richard Wilfong	SOAH	512.475.4994	512.475.4993
Docket Clerk	TCEQ	512.239.3311	512.239.3300
Stefanie Skogen	TCEQ	512.239.0606	512.239.0575
Shari Heino	Mathews & Freoland, LLP	512.703.2785	512.404.7800
James Murphy	OPIC	512.239.6377	512.239.4014
Philip Day		First class mail	
Jack D. McCartney John T. Bell		First class mail	

Please call us immediately if the document you receive is incomplete or illegible

From: John J. Carltoin	Telephone No.: 512.435.2360
Client/Matter No.:30410.0102	Total No. of Pages Sent: 8

**REMARKS:**

- Urgent     
  For Your Review     
  Reply ASAP     
  Please Comment  
 Original To Follow Via:   
  Hand Delivery   
  Federal Express   
  First Class Mail

**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**

**ATTACHMENTS Double Diamond Utilities Co.'s First Motion for Continuance**

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE (COLLECT), AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U. S. POSTAL SERVICE. THANK YOU.  
375252-1 12/03/2009