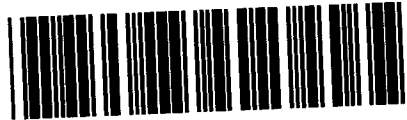


Control Number: 43922



Item Number: 35

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

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2014 DEC -9 AM 9:55

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Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 6, 2009

Ali Abazari  
Jackson Walker, L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701

Re: Water Rate/Tariff Change Application of Double Diamond Utilities' Co., Certificate of Convenience and Necessity No. 12087, in Hill, Palo Pinto, and Johnson Counties, Texas, Application No. 36220-R; SOAH Docket No. 582-09-4288; TCEQ Docket No. 2009-0505-UCR

Dear Mr. Abazari:

Please find enclosed the Executive Director's Second Interrogatories, Requests for Admissions, and Requests for Production to Double Diamond Utilities Co. Please let me know if you have any questions.

Sincerely,

Stefanie Skogen  
Staff Attorney  
Environmental Law Division

Enclosure

cc: Mailing List

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CHIEF CLERK'S OFFICE

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

WATER RATE/TARIFF CHANGE APPLICATION OF DOUBLE DIAMOND UTILITIES CO., CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) NO. 12087, IN HILL, PALO PINTO, AND JOHNSON COUNTIES, TEXAS, APPLICATION NO. 36220-R	§ § § § § § § § §	BEFORE THE STATE OFFICE         OF         ADMINISTRATIVE HEARINGS
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**EXECUTIVE DIRECTOR'S SECOND INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUESTS FOR ADMISSION TO DOUBLE DIAMOND UTILITIES CO.**

TO: DOUBLE DIAMOND UTILITIES CO.

c/o Ali Abazari  
Jackson Walker, L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701

Pursuant to the Administrative Procedure Act, sections 2001.001-.092 of the Texas Government Code; Texas Rules of Civil Procedure 190-197; title 30, section 80.151 of the Texas Administrative Code; and title 1, section 155.23 of the Texas Administrative Code, you are required to answer in complete detail and in writing each of the following interrogatories, requests for production, and requests for admission regarding **Application No. 36220-R**. You are required to sign your answers to the requests, to swear to the truth of your responses to the interrogatories before a notary public or other judicial officer, and to deliver a complete, signed, and notarized copy of your answers to Stefanie Skogen, Staff Attorney, Environmental Law Division, MC-173, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, in accordance with the Administrative Law Judge's directive and the rules of the Texas Commission on Environmental Quality (TCEQ).

**I. DEFINITIONS**

As used herein, the terms "you," "your," or "yourself" refer to **DOUBLE DIAMOND UTILITIES CO.**, the party to whom these requests are addressed, as well as to each of its parents, predecessors, subsidiaries, and affiliates, and to each of its present and former officers, employees, agents, representatives, and attorneys acting on its behalf.

**APPLICATION**

As used herein, the term "application" refers to the application filed by you on October 23, 2008, requesting water rate changes, which has been assigned Application No. 36220-R and is the

subject matter of this proceeding.

#### REPRESENTATIVE

As used herein, the term "representative" means any and all agents, employees, servants, officers, directors, attorneys, or other persons acting or purporting to act on your behalf.

#### PERSON

As used herein, the term "person" means any natural individual in any capacity whatsoever or any entity or organization, including divisions, departments, and other units therein, and shall include, but not be limited to, a public or private corporation, partnership, joint venture, voluntary or unincorporated association, organization, proprietorship, trust, estate, governmental agency, commission, bureau, municipality, or department.

#### DOCUMENT

As used herein, the term "document" means any medium upon which information can be recorded or retrieved and includes, without limitation, the original and each copy, regardless of origin and location, of any book, pamphlet, periodical, letter, memorandum (including any memorandum or report of a meeting or conversation), invoice, bill, order form, receipt, financial statement, accounting entry, diary, calendar, telex, telegram, cable, facsimile transmission, report, record, contract, agreement, study, handwritten note, draft, working paper, chart, paper, print, laboratory record, drawing, sketch, graph, index, list, tape, photograph, microfilm, data sheet or data processing card, computer tape or disk, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, which is in your possession, custody, or control. The term "document" further means a copy of any document, as referred to above, if such copy contains notes, writings, or is in any way different from or an alteration of the original document.

#### COMMUNICATION

As used herein, the term "communication" means any oral or written utterance, notation, or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons.

#### IDENTIFICATION

As used herein, the terms "identification," "identify," or "identity," when used in reference to (a) a natural individual - require you to state his or her full name and business address; (b) a corporation - require you to state its full corporate name and any names under which it does business, its state of incorporation, the address of its principal place of business, and the addresses of all its offices; (c) a business - require you to state the full name or style under which the business is conducted, its business address or addresses, the types of businesses in which it is engaged, the geographic areas in

which it conducts those businesses, and the identity of the person or persons who own, operate, and control the business; (d) a document - require you to state the number of pages and the nature of the document (e.g., letter or memorandum), its title, its date, the name or names of its authors and recipients, and its present location and custodian; (e) a communication - require you, if any part of the communication was written, to identify the document or documents which refer to or evidence the communication and, to the extent that the communication was non-written, to identify the persons participating in the communication and to state the date, manner, place, and substance of the communication.

## II. INSTRUCTIONS

### IDENTIFICATION OF DOCUMENTS

With respect to each request, in addition to supplying the information requested, you are to identify all documents that support, refer to, or evidence the subject matter of each request and your answer thereto.

If any or all documents identified herein are no longer in your possession, custody, or control because of destruction, loss, or any other reason, then do the following with respect to each and every such document: (a) describe the nature of the document (e.g., letter or memorandum); (b) state the date of the document; (c) identify the persons who sent and received the original and a copy of the document; (d) state in as much detail as possible the contents of the document; and (e) state the manner and date of disposition of the document.

If you contend that any material or information responsive to any of the interrogatories is privileged, state in response (a) that the information or material responsive to the interrogatories has been withheld; (b) the interrogatory to which the information or material relates; and (c) the privilege or privileges asserted.

### CONTENTION REQUESTS

When a request requires you to "state the basis of" a particular claim, contention, or allegation, state in your answer the identity of each and every communication and each and every legal theory that you think supports, refers to, or evidences such claim, contention, or allegation.

### CONTINUING REQUESTS

These requests are to be considered continuing in nature, and you are under a duty to timely supplement any response given to such requests, as required by Texas Rule of Civil Procedure 193.5.

## III. INTERROGATORIES

**Interrogatory No. 1:** Please provide the number of sewer connections at The Cliffs, The Retreat, and White Bluff at the end of the test year, listed individually by system.

**Interrogatory No. 2:** For the employees listed in your response to Interrogatory No. 4 in the Executive Director's (ED's) first round of discovery questions to you, please indicate the date of hire

and date of termination for each employee and the type of license held by any licensed operators on the employee list, including whether the license is for water, sewer, or both.

**Interrogatory No. 3:** For the employees listed in your response to Interrogatory No. 4 in the ED's first round of discovery questions to you that worked for the Rock Creek water and/or sewer systems, please indicate the names of the employees, the number of hours worked for each of those systems, the applicable accounting classifications, and the amount paid to those employees for their work at those systems that was included in the cost of service listed in your application.

**Interrogatory No. 4:** As a follow-up to Interrogatory No. 5 in the ED's first round of discovery questions to you, please explain what "DDC" stands for and exactly what work Terry Hafer and James Lyle performed for "DDC 3210-Construction" and "DDC-Utilities."

**Interrogatory No. 5:** Please provide a detailed calculation on how you arrived at Double Diamond-Delaware Inc.'s (DDD's) capital structure of 50.47% debt and 49.52% equity in your response to Interrogatory No. 6 in the ED's first round of discovery questions to you.

**Interrogatory No. 6:** Please explain why you pay an interest rate of 10% for advances while other DDD affiliates, primarily property owners' associations (POA), pay 0% interest for advances, as stated in Attachment 8 of your application, page 17, under the heading "Note H - Related-Party Transactions."

**Interrogatory No. 7:** Please list the names of all DDD affiliates that pay less than 10% interest on loans and/or advances from DDD or other DDD affiliates, as well as the terms and amounts of those loans and/or advances.

**Interrogatory No. 8:** As a follow-up to your response to Interrogatory No. 10 in the ED's first round of discovery questions to you, please explain how you calculated or allocated the expenses reported in your TCEQ Water and Wastewater Utilities Annual Report (AR) for 2007 between the water and sewer systems if you do not maintain a separate chart of accounts for the water and sewer systems. If you allocated the water and sewer expenses in your 2007 AR, please provide the allocation percentage(s).

#### **IV. REQUESTS FOR PRODUCTION**

**Request for Production No. 1:** Please provide documentation to support your response to Interrogatory No. 5.

**Request for Production No. 2:** Please provide documentation to support your response to Interrogatory No. 7.

**Request for Production No. 3:** Please provide your AR for 2007.

**Request for Production No. 4:** Please provide the calculations for each expense listed in your AR for 2007.

**Request for Production No. 5:** Please provide the general ledger and/or statement of operations used to calculate each expense listed in your AR for 2007. If any particular expense in the general ledger and/or statement of operations does not match the expense amount for the same item in the 2007 AR, please provide a detailed breakdown on how you arrived at each of those AR expenses.

**V. REQUESTS FOR ADMISSION**

**Request for Admission No. 1:** Admit that DDU's advances are included in the statements made in "Note H - Related-Party Transactions," found on Attachment 8, page 17 in the application.

Admit:  
Deny:  
Reason why cannot be admitted or denied:

**Request for Admission No. 2:** Admit that "Note H - Related-Party Transactions," found on Attachment 8, page 17 in the application indicates that advances to DDD affiliates, primarily POAs, do not bear interest.

Admit:  
Deny:  
Reason why cannot be admitted or denied:

**Request for Admission No. 3:** Admit that the interest amounts on your loans and advances from DDD are included in the calculation of the revenue requirement in your application.

Admit:  
Deny:  
Reason why cannot be admitted or denied:

**Request for Admission No. 4:** Admit that the interest amounts on your loans and advances from DDD are passed on to your customers through your water and sewer rates.

Admit:  
Deny:  
Reason why cannot be admitted or denied:

**Request for Admission No. 5:** Admit that Randy Gracy signed your AR for 2007.

Admit:  
Deny:  
Reason why cannot be admitted or denied:

**Request for Admission No. 6:** Admit that the notes payable listed in DDD's audited financial statement on pages 11-17 of Attachment 8 to your application bear less than 10% interest.

Admit:  
Deny:  
Reason why cannot be admitted or denied:

**Request for Admission No. 7:** Admit that your capital structure of 50.47% debt and 49.52% equity is hypothetical.

Admit:  
Deny:  
Reason why cannot be admitted or denied:

**Request for Admission No. 8:** Admit that the interest rate of 10% charged by DDD on its loans and advances to you is higher than the interest rates for the notes payable listed on pages 11-17 of DDD's audited financial statement, which is Attachment 8 to your application.

Admit:  
Deny:  
Reason why cannot be admitted or denied:

**Request for Admission No. 9:** Admit that you separated your expenses between your water and sewer systems in your AR for 2007.

Admit:  
Deny:  
Reason why cannot be admitted or denied:

**Request for Admission No. 10:** Admit that your 2007 annual operating revenues for water exceeded \$150,000 but did not exceed \$750,000, which makes you a Class B public water utility under title 30, section 291.72 of the Texas Administrative Code.

Admit:  
Deny:  
Reason why cannot be admitted or denied:

**Request for Admission No. 11:** Admit that each of your water systems has its own licensed operator.

Admit:  
Deny:  
Reason why cannot be admitted or denied:

**Request for Admission No. 12:** Admit that you did not acquire the water systems at The Cliffs, The Retreat, and White Bluff from another retail public utility.



Admit:  
Deny:  
Reason why cannot be admitted or denied:

**Request for Admission No. 13:** Admit that on Attachment 10 to your application, if a line item indicates that it is water or sewer related or is directly identified as a water or sewer expense, you allocated 100% of that expense to the water or sewer systems.

Admit:  
Deny:  
Reason why cannot be admitted or denied:

**Request for Admission No. 14:** Admit that on Attachment 10 to your application, if a line item is not identified specifically as a water or sewer expense, you used an allocation factor to allocate that line item expense between the water and sewer systems.

Admit:  
Deny:  
Reason why cannot be admitted or denied:

**Request for Admission No. 15:** Admit that when creating Attachment 10 to your application, you did not verify each line item amount with the original invoice or other original source document before allocating the amount between the water and sewer systems.

Admit:  
Deny:  
Reason why cannot be admitted or denied:

**Request for Admission No. 16:** Admit you listed total expenses in the amount of \$1,022,338 in your application, which is the same total expenses amount listed on page 2 of Attachment 10 to your application.

Admit:  
Deny:  
Reason why cannot be admitted or denied:

Respectfully submitted,

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

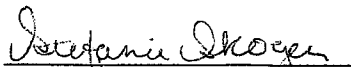
Mark R. Vickery, P.G., Executive Director

Robert Martinez, Director  
Environmental Law Division

By Stefanie Skogen  
Stefanie Skogen  
Staff Attorney  
State Bar of Texas No. 24046858  
Environmental Law Division  
P.O. Box 13087, MC-173  
Austin, Texas 78711  
Phone: (512) 239-0575  
Fax: (512) 239-0606

**CERTIFICATE OF SERVICE**

I certify that on November 6, 2009, a copy of the foregoing document was sent by first class, agency mail, electronic mail, and/or facsimile to the persons on the attached Mailing List.

  
Stefania Skogen, Staff Attorney  
Environmental Law Division

**Mailing List**

**Double Diamond Utility Co., Inc.**  
**SOAH Docket No. 582-09-4288**  
**TCEQ Docket No. 2009-0505-UCR**

**REPRESENTING DOUBLE DIAMOND UTILITY CO., INC.:**

Ali Abazari  
Jackson Walker, L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
Phone: (512) 236-2239  
Fax: (512) 391-2197

**REPRESENTING WHITE BLUFF SUBDIVISION RATEPAYERS:**

Shari Heino  
Matthews & Freeland, L.L.P.  
327 Congress Avenue, Suite 300  
Austin, Texas 78701  
Phone: (512) 404-7800  
Fax: (512) 703-2785

**THE CLIFFS UTILITY COMMITTEE:**

Phillip Day  
90 Glen Abbey Drive South  
Graford, Texas 76449  
Phone: (940) 779-9296

**THE RETREAT HOMEOWNERS GROUP:**

Jack D. McCartney and John T. Bell  
6300 Annanhill Street  
Cleburne, Texas 76033-8957  
Phone: (817) 645-4392

**REPRESENTING THE 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 78711-3087  
Phone: (512) 239-4014  
Fax: (512) 239-6377

**OFFICE OF THE CHIEF CLERK:**

LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
Phone: (512) 239-3300  
Fax: (512) 239-3311

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