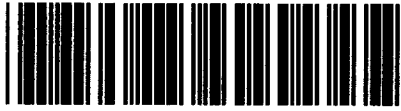




Control Number: 43922



Item Number: 51

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

43922

RECEIVED

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

2014 DEC -9 AM 10: 01

PUBLIC UTILITY COMMISSION
FILING CLERK

APPLICATION OF DOUBLE
DIAMOND UTILITIES COMPANY,
INC., CCN NO. 12087, TO CHANGE
ITS WATER RATE TARIFF IN HILL,
PALO PINTO, AND JOHNSON
COUNTIES

§
§
§
§
§
§

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

2010 JAN -7 AM 9: 55
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

THE RETREAT HOMEOWNER GROUP'S STATEMENT OF POSITION ON
ORDER NO. 3, PREHEARING CONFERENCE ON DOUBLE DIAMOND UTILITIES
MOTION FOR CONTINUANCE

On December 11, 2009, Order No. 3 was issued by the Honorable Richard R. Wilfong, Administrative Law Judge in response to Double Diamond Utilities Company's (DDU) motion for continuance filed on December 8, 2009. The White Bluff Subdivision Ratepayers (WBSR) filed a response on December 9, 2009, stating that the current application uses the same consolidated accounting for revenue requirements that was used in SOAH Docket No. 582-08-0698; TCEQ Docket No. 2007-1708-UCR, contending that the ALJ and Commission rejected consolidation of the systems for determining revenue requirements and tariffs to recover same. The Retreat Homeowners Group (TRHG) did not file a response to DDU's motion for continuance, but did indicate to DDU's attorney of record in a telephone conversation on December 4, 2009 prior to the filing of the motion for continuance that TRHG was opposed to any continuance that delayed the Hearing on Merit past its currently scheduled date of April 20 - 22, 2010 since failure of DDU's previous attorney of record to meet schedule deadlines was not a valid excuse. Several options were discussed with DDU's attorney of record that might allow TRHG to agree to the continuance motion. DDU's attorney indicated he would discuss these with his client when they met the following week, but that he might be asked to file a motion for continuance by his client without the protestants agreement. In a telephone call from DDU's attorney the following week, TRHG was informed that DDU had instructed him to file the motion for continuance immediately. No further discussion of options took place then or at any other time since.

In Order No. 3 setting the prehearing conference for January 5, 2010, the ALJ requested that parties be prepared to address the following issues:

- 1) the effect of the final order in TCEQ Docket No. 2007-1708-UCR, specifically, should this proceeding be dismissed or abated to allow applicant to file an application consistent with the recent TCEQ final order;
- 2) should the potentially refundable portion of utility payments be put in escrow on a going-forward basis;
- 3) Applicants motion for continuance;
- 4) the procedural schedule for this proceeding if it is continued and not dismissed or abated;
- 5) any pending motions.

TRHG will address the above issues at the prehearing conference on January 5, 2010 in Austin, Texas and would provide the following written statement of position with regard to each of them.

I. Effect of Final Order in TCEQ Docket No. 2007-1708-UCR

TRHG believes that the Final Order in TCEQ Docket No. 2007-1708-UCR stands on its own, although there is a pending motion for rehearing in that proceeding. Any modification of that final order might have an impact on this proceeding. The ordering provisions on page 30 of that final order, as it currently stands, denied DDU's application "to increase the rates that it charges for the retail water utility service that it provides" to The Cliffs, The Retreat and White Bluff developments. Those ordering provisions also directed that "DDU's Tariff shall continue to reflect its previously approved water rates." Based on these ordering provisions, as they currently stand, TRHG believes that the proceeding in this docket can continue without dismissal or abatement. WBSR states that DDU's application in the current docket uses the consolidated accounting for revenue requirements that the Commission has now rejected. TRHG believes and the Commission only found on page 19 in the Conclusions of Law in its Final Order that "DDU failed to meet its burden of proof" regarding the consolidation of systems. DDU offered additional support from a prior Commission final order during its response to the Proposal for Decision in TCEQ Docket No. 2007-1708-UCR that the ALJ did not consider in her decision. Therefore, TRHG believes that DDU has the right to file its application in a consolidated format if it feels it can meet its burden of proof that the water systems should be considered similar for revenue requirements and that this should not be considered a reason to dismiss or abate the proceeding under this docket.

II. Escrow Account for Refundable Portion of Utility Payments

The Cliffs, The Retreat and White Bluff ratepayers have been paying higher than justified interim water rates since September 28, 2007. Refunds for the first application have been ordered, but are still pending. Interim rates under this application have been collected by DDU since December 27, 2008 and they are essentially the same rates requested in the previous application which the Commission denied. TRHG believes that if this proceeding is dismissed to allow DDU to file a new application, any portion of rates above current approved tariffs collected since December 27, 2008 should be refunded immediately or at least over no more than a twelve (12) month period from the date of dismissal. If the proceeding is abated, then TRHG believes that the potentially refundable portion of utility payments for water usage be put in escrow on a going-forward basis.

III. DDU's Motion for Continuance

TRHG does not agree to or support DDU's First Motion for Continuance of the proceedings under TCEQ Docket 2009-0505-UCR without some relief in the form of a suspension of interim rates for the length of delay requested or putting the potentially refundable rates in escrow as indicated in II. above. We believe that DDU has had more than adequate time to secure a competent attorney since December 28, 2008. Also, DDU has had the ALJ Proposal for Decision since June 15, 2009 which indicated the direction the decision on consolidation of systems was likely to go. Also, they were represented at the commission hearing on October 7, 2009 when the Commission made its decision. If DDU waited until receiving the written Final Order on November 16, 2009 to begin preparation of prefiled testimony in this case, it was their decision and the ratepayers should not be penalized by a continuance at their request. Therefore, TRHG would respectfully request that DDU's Motion for Continuance be denied.

IV. Procedural Schedule For This Docket If Continued

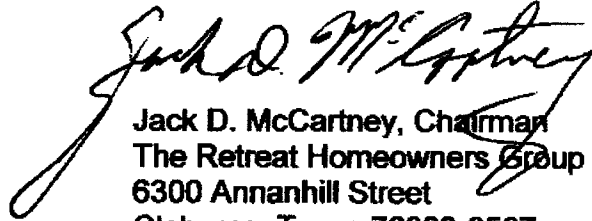
TRHR would request that the Hearing on Merit for this proceeding be held at the earliest possible date after the original April, 2010 date if DDU's motion for a continuance is granted.

V. Any Pending Motions

TRHG has no motions to be considered for this proceeding at this time and is not aware of any other than DDU's Motion for Continuance.

Therefore, in consideration of the premises stated above, TRHG requests that Final Order as currently issued in Docket 2007-1708-UCR does not require dismissal or delay of this proceeding and that DDU's Motion for Continuance be denied.

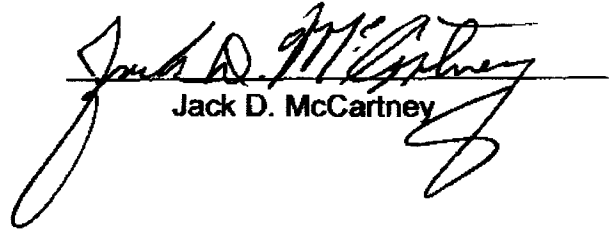
Respectfully submitted,

A handwritten signature in black ink that reads "Jack D. McCartney". The signature is written in a cursive style with a long, sweeping underline that extends to the left and then loops back under the name.

Jack D. McCartney, Chairman
The Retreat Homeowners Group
6300 Annanhill Street
Cleburne, Texas 76033-8597
(817) 645-4392 - Telephone
jacksandramccart@aol.com

CERTIFICATE OF SERVICE

I hereby certify that on the 4th of January, 2010, a true and correct copy of the foregoing document was sent by first class, e-mail and/or facsimile to the persons listed below.


Jack D. McCartney

Honorable Richard R. Wilfong
Administrative Law Judge
State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701

Docket Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk
P.O. Box 13087
Austin Texas 78711-3087

John J. Carlton
Attorney for Double Diamond Utilities, Inc.
Armbrust & Brown, L.L.P.
100 Congress Avenue, Suite 1300
Austin, Texas 78701-2744
512-435-2300 (Telephone)

Shari Heino
Attorney for White Bluff Sub Division Ratepayers
Matthews & Freeland L.L.P.
327 Congress Avenue, Suite 300
Austin, Texas 78701
512-703-2785 (Fax)

CHIEF CLERKS OFFICE

2010 JAN -7 AM 9:55

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Phillip Day
The Cliffs Utility Committee
90 Glen Abbey Drive So.
Graford, Texas 76449

Stefanie Skogen
Staff Attorney
Texas Commission on Environmental Quality
P.O. Box 13087, MC-173
Austin, Texas 78711-3087
512-239-0606 (Fax)

Eli Martinez
Office of the Public Interest Counsel
P.O. Box 13087
Austin, Texas 78711-3087
512-239-6377 (Fax)