



Control Number: 43922



Item Number: 54

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

43922

RECEIVED

ARMBRUST & BROWN, L.L.P.

2014 DEC -9 AM 10:01

ATTORNEYS AND COUNSELORS

PUBLIC UTILITY COMMISSION  
FILING CLERK

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

FACSIMILE 512-435-2360  
FACSIMILE 512-435-2398

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

January 4, 2010

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

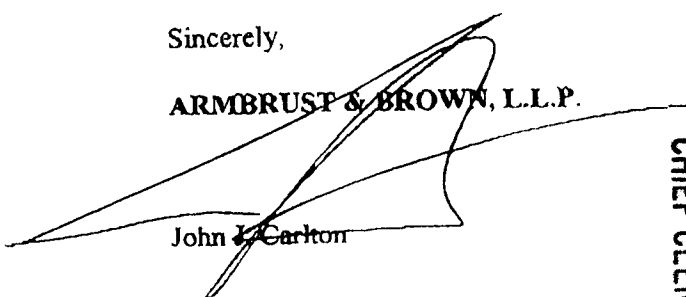
Dear Judge Wilfong:

Enclosed for filing in the above referenced case is Double Diamond Utilities Co.'s Statement in Support of Its 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: TCEQ Chief Clerk (via fax: 512.239.3311)
- Stefannie Skogen (via fax: 512.29.0606)
- Shari Heino (via fax: 512.703.2785)
- James B. Murphy (via fax: 512.239.6377)
- Phillip Day: (via email: [pday@nsb-pklake.com](mailto:pday@nsb-pklake.com))
- Jack D. McCartney & John T. Bell (via email: [jacksandramccart@uol.com](mailto:jacksandramccart@uol.com))

2010 JAN - 5 AM 8:04  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**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**

§  
§  
§  
§  
§

**BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**

**CHIEF CLERKS OFFICE**

**2010 JAN -5 AM 8:04**

**TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY**

**DOUBLE DIAMOND UTILITIES COMPANY, INC.'S  
STATEMENT IN SUPPORT OF ITS MOTION FOR CONTINUANCE**

**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:**

COMES NOW, Double Diamond Utilities Co., Applicant herein, and files this Statement in support of its Motion for Continuance.

**I.  
INTRODUCTION**

On December 11, 2009, Judge Wilfong issued Order No. 3 in this proceeding. The Order abated the procedural deadlines established in Order No. 1 and set a Prehearing Conference for January 5, 2010. Order No. 3 requested that the Parties be prepared to address the following issues at the Prehearing Conference:

1. the effect of the final order in TCEQ Docket No. 2007-1708-UCR, specifically, should this proceeding be dismissed or abated to allow the 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; and
5. any pending motions.

Applicant's initial position on each of these items is set forth below.

**II.  
EFFECT OF TCEQ DOCKET NO. 2007-1708-UCR**

There is no need to dismiss or abate the current application (2009-0505-UCR or "2008 Application") to allow the Applicant to file a new application because the 2008 Application stands on its own merits. Although the Final Order in Docket No. 2007-1708-UCR ("2007 Application") dated November 12, 2009, has no legal impact on the 2008 Application, it does have a practical impact on the Applicant's preparation of its case to meet its burden of proof to support the rates noticed in the 2008 Application. And the Applicant should be afforded an

opportunity to prepare and prefile testimony that addresses the issues raised by the findings and conclusions contained in the Final Order for the 2007 Application.

The 2007 Application was based upon Applicant's 2006 Test Year revenue requirement. The Final Order denied Applicant's requested rate increase, which included a request for approval of consolidated rates for the White Bluff and The Retreat water systems. The 2008 Application, filed in October 2008 and before the evidentiary hearing on the 2007 Application, is based upon Applicant's 2007 Test Year revenue requirement, generally follows the format of the 2007 Application, and assumes that the White Bluff and The Retreat water systems are consolidated for rate purposes. Consequently, the noticed rate increase combined the White Bluff and The Retreat water systems into one notice and left The Cliffs rate increase as a separate notice. The published Notices of Proposed Rate Change establish the maximum rates and other charges that the Applicant is entitled to seek under the 2008 Application for all three systems regardless of whether they are ultimately consolidated.

As a result of the Commission's denial of the 2007 Application rate increase and conclusion that the Applicant did not present evidence on consolidation or show how the systems were substantially similar in terms of their cost of service, the Applicant's direct case must now demonstrate that consolidation of the White Bluff and The Retreat water systems is allowed under Texas Water Code (the "Code") §13.145(a) and 30 Texas Administrative Code (TAC) §291.21(m). The Applicant must be allowed to prefile testimony that is sufficient to allow the Judge and the Commission to reach a conclusion regarding consolidation.

In addition, the Commission's denial of the 2007 Application rate increase included findings regarding Applicant's failure to properly identify developer contributions, failure to sufficiently demonstrate how water and wastewater costs were allocated, failure to provide sufficient evidence regarding original cost of the system and other failures. The Applicant must be allowed to prefile testimony that demonstrates that each of these failures are not present in the 2008 Application.

### III.

#### ESCROW OF FUTURE RATE INCREASE REVENUES

Applicant currently opposes the escrow of any increased revenues attributable to the rate increase proposed in the 2008 Application because Applicant continues to operate the utility at a loss. An escrow requirement, if any, should be in accordance with 30 TAC §291.30 and should only be prospective in nature.

### IV.

#### MOTION FOR CONTINUANCE

Applicant continues to urge the Judge to approve its request for at least a 75 day continuance of the hearing date and all procedural deadlines.

### V.

#### PROCEDURAL SCHEDULE

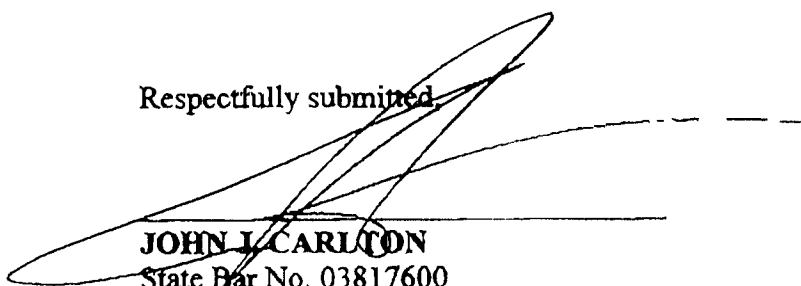
The Applicant will be prepared to discuss a revised procedural schedule at the Preliminary Hearing.

VI.  
PENDING MOTIONS

Applicant is not aware of any pending motions other than its First Motion for Continuance.

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 I. 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.**

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2010 JAN -5 AM 8:05  
CHIEF CLERKS OFFICE

**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 4<sup>th</sup> day of January, 2010 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

*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

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

*Office of Public Interest Counsel*

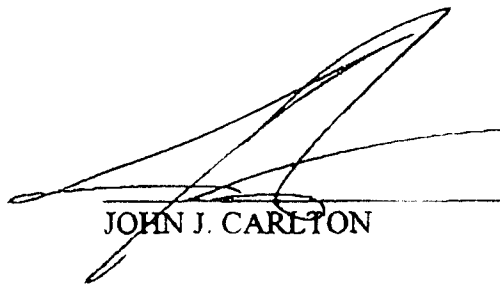
James Murphy  
Texas Commission on Environmental Quality  
Office of Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711  
Fax: (512) 239-6377

*The Cliffs Utility Committee*

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

*The Retreat Homeowners Group*

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



JOHN J. CARLTON

CHIEF CLERKS OFFICE

2010 JAN -5 AM 8:05

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**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: January 4, 2010

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2010 JAN - 5 AM 8:00  
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 & Freeland, LLP	512.703.2785	512.404.7800
James Murphy	OPIC	512.239.6377	512.239.4014
Philip Day		Via Email & First Class Mail	
Jack D. McCartney John T. Bell		Via Email & First Class Mail	

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

From: John J. Carltoia	Telephone No.: 512.435.2360
Client/Matter No.: 30410.0102	Total No. of Pages Sent: 4

**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 Company, Inc.'s Statement In Support Of Its 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 OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO 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