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MEMORANDUM

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Arizona Corporation Commission

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2009 JAN 30 A 9:52

FROM: Ernest G. Johnson
Director
Utilities Division

JAN 30 2009

AZ CORP COMMISSION
DOCKET CONTROL

DATE: January 30, 2009

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RE: DOUBLE DIAMOND UTILITIES, INC. - REQUEST FOR EXTENSION OF COMPLIANCE DATES (DOCKET NO. WS-20543A-07-0435)

History

In Decision No. 70352, dated May 16, 2008, the Arizona Corporation Commission ("Commission") approved the application of Double Diamond Utilities, Inc. ("DDU" or "Company") for a Certificate of Convenience and Necessity ("CC&N") to provide water and wastewater service in Mohave County.

In Decision No. 70352, the Commission ordered among other things that DDU should:

1. Procure a performance bond or irrevocable sight draft letter of credit in the amount of \$500,000 by December 31, 2008.
2. Retain a Certified Operator at least six months before it serves its first customer or by June 30, 2009, whichever comes first.

On December 17, 2008, DDU docketed a request for extension of time to file the above compliance items. The Company indicated in its application that:

"...since the issuance of the CC&N in May 2008, the economy has suffered a precipitous downturn and the finance and credit markets have significantly tightened. The White Hills development had already been delayed due to delays in the construction of the Hoover Dam bypass bridge."

The Company requests that the compliance date for the procurement of a performance bond or irrevocable sight draft letter of credit be changed to "15 days prior to providing service to any customer". The Company further requests that the compliance date for retaining a Certified Operator be extended to "at least six months before it serves its first customer".

Staff Recommendation

Staff is uncomfortable with the filing of compliance items with no foreseeable due date. Therefore, Staff recommends that the Company be granted an extension of time to procure and file a performance bond or irrevocable sight draft letter of credit until 30 days before it serves its first

Docket Control Center

January 30, 2009

Page 2

customer or December 31, 2011, whichever comes first. Staff similarly recommends that the Company seek out and retain a Certified Operator at least six months before it serves its first customer or December 31, 2011, whichever comes first.

Staff understands the downturn in the economy has put a damper on much of the development in the state; however, is concerned with projects being put on hold and the possibility of the development never taking place. Therefore, Staff will continue to recommend deadlines in extension requests so that the Commission can re-evaluate and consider the progress, or lack thereof, of developments.

EGJ:KDB:lmh

Originator: Kimberly Battista

Attachment

SERVICE LIST FOR: DOUBLE DIAMOND UTILITIES, INC.
DOCKET NO. WS-20543A-07-0435

Mr. Michael W. Patten
Roshka, DeWulf & Patten, PLC
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004
Attorney for Double Diamond Utilities, Inc.

Mr. Ernest G. Johnson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Janice Alward
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

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2008 DEC 17 P 12: 54
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Arizona Corporation Commission
DOCKETED
DEC 17 2008

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IN THE MATTER OF THE APPLICATION OF
DOUBLE DIAMOND UTILITIES, INC. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE WATER SERVICE
AND WASTEWATER SERVICE

Docket No. WS-20543A-07-0435

**MOTION FOR EXTENSION OF
COMPLIANCE DATES**

Double Diamond Utilities, Inc. ("DDU"), through undersigned counsel, hereby moves for the extension of two compliance dates set forth in Decision No. 70352 (May 16, 2008). This request arises from the significant downturn in the economy that has caused a delay in the timetable for the development covered by DDU's CC&N.

First, DDU requests that the deadline for procuring a performance bond or irrevocable sight draft letter of credit in the amount of \$500,000 be extended from December 31, 2008 until 15 days prior to providing service to any customer. This proposed deadline parallels comparable deadlines for similar bond requirements for other new water and wastewater companies.

Second, DDU requests that the deadline for retaining a Certified Operator (and related notification to the Commission) – currently the deadline is "at least six months before its serves its first customer or by June 30, 2009, whichever comes first" – be extended to "at least six months before its serves its first customer" in light of key facility design compliance dates set forth in Decision No. 70352 that would be relevant to the timing of retaining a Certified Operator.

DDU submits that these extensions will not material impact the purpose of the two conditions, particularly since the development will be somewhat delayed and the proposed dates are tied to certain actions to which the conditions are addressed.

Background

In Decision No. 70352, DDU received a CC&N to provide water and wastewater service to the initial phase of The Ranch at White Hills ("White Hills"), a large master planned community located between Kingman and Las Vegas. As set forth in the Decision, DDU is a developer-owned utility that will ultimately serve the entire White Hills development. The initial phase of constitutes approximately 10% of the overall development.

The Decision set forth numerous compliance requirements that were due at various times between the issuance of the Decision and May 16, 2010 (that is, two years after the date of the Decision). DDU has met all compliance requirements that have been due to date, including the filing of its rate tariff, its curtailment tariff, its backflow prevention tariff and its Water Conservation Plan.

There remain several compliance requirements. The most immediate compliance requirement is the procurement of a \$500,000 performance bond or irrevocable sight draft letter of credit by December 31, 2008. DDU must also identify a Certified Operator at least six months before its serves its first customer or by June 30, 2009, whichever comes first. In addition to these imminent compliance requirements, DDU must file key permits for the construction of the water and wastewater systems by May 16, 2010. These permits include the Approval to Construct for Phase 1 of the water system and the Aquifer Protection Permit for the wastewater treatment plant. Construction cannot begin until these permits are obtained and it will take significant time thereafter before the facilities can be constructed and service commenced.

As the Commission is well aware, since the issuance of the CC&N in May 2008, the economy has suffered a precipitous downturn and the finance and credit markets have significantly tightened. The White Hills development had already been delayed due to delays in the construction of the Hoover Dam bypass bridge. Although the Mardians, the developer of White Hills, still fully intend to proceed with White Hills, common sense and good judgment dictate that the timeline for the development be pushed back.

1 **A. Extension of the Date for Procuring the Bond.**

2 In Decision No. 70532, the Commission required DDU to procure and file a performance
3 bond or letter of credit in the amount of \$500,000 by December 31, 2008. The rationale for
4 requiring the bond, as set forth in the Decision (at 16) is “to ensure that the applicants would be
5 able to continue operations for a reasonable period of time without a related entity’s financial
6 support, if necessary.” The Decision cited the Commission’s previous decision for the Green
7 Acres utilities (Decision No. 69256) to support this requirement. In the Green Acres decision, the
8 Commission required that the bond or letter of credit be procured and filed “at least 15 days before
9 providing water and wastewater utility service to any customer.” DDU requests that the
10 Commission now set a similar compliance date for its bond requirement.¹

11 Extending the bond compliance date as requested will still provide the public benefit
12 intended by the bond. Certainly, there will be no customers receiving service in the near future.
13 The proposed timing will still protect DDU’s customers in a timely manner. Second, given the
14 current condition of the financial and credit markets, DDU believes that the terms of any bond or
15 letter of credit will be more palatable in the future compared to now. Third, not restricting funds
16 through the bond or letter of credit now will allow DDU to move forward with other permitting
17 activities necessary to emplace the infrastructure that will ultimately serve the customers. DDU
18 does not object to the performance bond requirement, just the particular timing of the bond.

19 **B. Extension of the Date for Retaining the Certified Operator.**

20 The Commission also required DDU to retain a Certified Operator and notify the
21 Commission of that retention “at least six months before its serves its first customer or by June 30,
22 2009, whichever comes first.” DDU welcomes the willingness of the Commission to review
23 DDU’s choice of a Certified Operator. However, given the anticipated timeline for the
24 development, DDU believes that it would be premature to retain a Certified Operator by June 30,
25

26 ¹ In the pending Perkins Mountain CC&N docket (Docket No. SW-20739A-05-0489 et al.), the
27 proposed order (at 25) requires that the bond be procured and filed “prior to service being provided
to any customer.”

1 2009, particularly given other compliance dates in the Decision. In particular, DDU is required to
2 obtain the Aquifer Protection Permit for its wastewater treatment plant and the Approval to
3 Construct for the water system for Phase 1 of the development by May 16, 2010 (that is, two years
4 after the date of the Decision). Given possible construction time frames, it is unlikely there will be
5 any plant to operate until 2011.

6 Retaining a Certified Operator up to two years in advance of the commencement of
7 operation oversee does not make sense, particularly in this economy. DDU believes that it will be
8 difficult to enter into a cost-effective and prudent contract for services that may not be needed for
9 at least two years. Moreover, given the economy, DDU would prefer to wait until a date closer to
10 the date of operation to contract with the Operator to better ensure that Operator will be able to
11 meet its contractual obligations. Therefore, DDU requests that the compliance date for retaining
12 the Certified Operator be extended to "at least six months before its serves its first customer" to
13 allow a closer temporal connection between the retention of the Operator and the commencement
14 of operations.

15 WHEREFORE, DDU requests that two compliance dates be extended as follows:

16 1. The deadline for procuring a performance bond or irrevocable sight draft letter of
17 credit in the amount of \$500,000 be extended from December 31, 2008 until 15 days prior to
18 providing service to any customer. This proposed deadline parallels comparable deadlines for
19 similar bond requirements for other new water and wastewater companies.

20 2. The deadline for retaining a Certified Operator (and related notification to the
21 Commission) be extended from "at least six months before its serves its first customer or by June
22 30, 2009 to "at least six months before its serves its first customer."
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ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

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RESPECTFULLY submitted this 17th day of December, 2008.

ROSHKA DEWULF & PATTEN, PLC

By 

Michael W. Patten
One Arizona Center
400 East Van Buren Street, Suite 800
Phoenix, Arizona 85004

Attorney for Double Diamond Utilities, Inc.

Original and 13 copies of the foregoing
filed this 17th day of December 2008, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered/mailed
this 17th day of December 2008 to:

Yvette Kinsey
Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Kevin Torrey, Esq.
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007