

OPEN MEETING ITEM

COMMISSIONERS
BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH



ORIGINAL



ARIZONA CORPORATION COMMISSION

DATE: JULY 26, 2013

2013 JUL 26 P 2:02

DOCKET NO.: WS-20543A-07-0435

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Order on:

DOUBLE DIAMOND UTILITIES, INC.
(EXTENDING TIME DEADLINE CONTAINED IN DECISION NOS. 70352, 70947, 72008 AND 73134)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

AUGUST 5, 2013

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

AUGUST 13, 2013 and AUGUST 14, 2013

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Jodi A. Jerich
JODI JERICH
EXECUTIVE DIRECTOR

Arizona Corporation Commission
DOCKETED

JUL 26 2013

DOCKETED BY
nr

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

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

DOCKET NO. WS-20543A-07-0435

DECISION NO. _____

**ORDER EXTENDING TIME
DEADLINE CONTAINED IN
DECISION NOS. 70352, 70947, 72008,
and 73134.**

Open Meeting
August 13 and 14, 2013
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On July 23, 2007, Double Diamond Utilities, Inc. ("DDU" or "Double Diamond") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("CC&N") to provide water and wastewater services for a master planned community known as The Ranch at White Hills ("White Hills") in Mohave County, Arizona.
2. On May 16, 2008, the Commission issued Decision No. 70352, which approved DDU's application for CC&Ns to provide water and wastewater services to White Hills. Decision No. 70352 required DDU, among other things, to file by December 31, 2008, a performance bond or irrevocable sight draft letter of credit ("ISDLC") in the amount of \$500,000 for its water and wastewater CC&Ns, and to retain a Certified Operator at least six months before it serves its first customer or by June 30, 2009, whichever occurred first.

1 3. On December 17, 2008, DDU filed a Motion for Extension of Compliance Dates to
2 file the performance bond or ISDLC and to retain a Certified Operator. DDU's motion stated that
3 DDU had complied with other requirements in Decision No. 70352, which included filing its rate
4 tariff, curtailment tariff, backflow prevention tariff, and Water Conservation Plan. The motion
5 further stated that due to a downturn in the economy, the finance and credit markets had tightened,
6 which had delayed the development at White Hills. DDU further requested that it be allowed to file
7 the performance bond or ISDLC at least 15 days prior to providing water and wastewater utility
8 service to any customers.

9 4. On April 7, 2009, the Commission issued Decision No. 70947 granting DDU an
10 extension of time, until 30 days prior to serving its first customer or by December 31, 2011,
11 whichever comes first, to procure and file proof of a performance bond or ISDLC in the amount of
12 \$500,000, pursuant to Commission Decision No. 70352. Decision No. 70947 also extended the
13 timeframe for DDU to retain a Certified Operator for its water and wastewater systems to December
14 31, 2011 or six months before DDU serves its first customer, whichever occurred first.

15 5. On April 30, 2010, DDU filed a motion for an extension of time to file: 1) copies of the
16 water division's Approval to Construct ("ATC") for Phase 1; 2) copies of the wastewater division's
17 General Permits for Phase 1; and 3) a copy of the Aquifer Protection Permit for the wastewater division.
18 Pursuant to Decision No. 70352, the above compliance items were due to be completed by May 16, 2010.
19 DDU's motion requested an extension of time, until December 31, 2012, to file the above compliance
20 items.

21 6. On December 10, 2010, the Commission issued Decision No. 72008 granting DDU an
22 extension of time, until December 31, 2012, to comply with Commission Decision No. 70352 by
23 filing copies of the water division's ATC for Phase 1, copies of the wastewater division's General
24 Permits for Phase 1, and a copy of the Aquifer Protection Permit for the wastewater division.

25 7. On December 22, 2011, DDU filed its fourth Motion for Extension of Compliance
26 Dates, requesting that the deadlines for procuring a performance bond or ISDLC in the amount of
27 \$500,000 be extended from December 31, 2011, to December 31, 2014, or 30 days prior to DDU
28 serving its first customer, whichever occurs first. DDU also requested that the deadline for it to retain

1 a Certified Operator be extended from December 31, 2011, until six months prior to serving its first
2 customer or December 31, 2014, whichever occurs first. DDU stated that the reason for the extension
3 request is that there has been a continuing downturn in the economy and the housing market that has
4 caused delay in the timetable for the development covered by DDU's CCN.

5 8. DDU attached to its motion a letter from the developer/owner expressing a continuing
6 desire to have DDU provide water and wastewater services in the CC&N area.

7 9. On March 6, 2012, Staff filed a Memorandum in response to DDU's Motion for
8 Extension of Compliance Dates. Staff recommended approval of the request for an extension of the
9 deadlines for DDU to procure a performance bond or ISDLC and to obtain a Certified Operator.
10 Staff based its recommendation on the Company's belief that there would not likely be any plant in
11 operation until 2014; that procurement of a performance bond or ISDLC or retaining a Certified
12 Operator was premature; and that there was a continuing desire to have DDU provide water and
13 wastewater services in the CC&N extension areas. Therefore, Staff recommended that the due date
14 for procurement of the performance bond or ISDLC be extended to 30 days prior to DDU serving its
15 first customer or December 31, 2014, whichever occurred first; and that the due date for DDU to
16 obtain a Certified Operator be extended until six months prior to DDU serving its first customer or
17 December 31, 2014, whichever occurred first. Staff also recommended that no additional time
18 extension be granted.

19 10. On May 1, 2012, the Commission issued Decision No. 73134 granting DDU an
20 extension of time for the procurement of a performance bond or ISDLC to 30 days prior to DDU
21 serving its first customer or December 31, 2014, whichever occurred first; and extending the deadline
22 for DDU to obtain a Certified Operator until six months prior to DDU serving its first customer or
23 December 31, 2014, whichever occurred first.

24 11. On January 7, 2013, DDU filed a Motion for Extension of Compliance Dates,
25 requesting an extension of compliance deadlines set forth in Decision No. 70352. DDU's motion
26 requests an extension of the compliance deadlines from December 31, 2012 to December 31, 2014 to
27 file: 1) copies of the ATC for the water system for Phase 1 of the initial phase of the Ranch at White
28 Hills project; 2) copies of the General Permits for Phase 1 of the initial phase of the wastewater plant

1 for the Ranch at White Hills; and 3) a copy of the Aquifer Protection Permit for the wastewater
2 division.

3 12. DDU's motion states that an extension of time is necessary due to the continuing
4 downturn in the economy, particularly the housing and development markets in Mohave County;
5 DDU does not believe it is prudent at this time to incur expenses related to the compliance items; that
6 the overall plans for the development may be modified to meet the new demands of the recovering
7 markets and the emerging renewable energy development in the vicinity of the Ranch at White Hills;
8 that changes in the market could affect the location of plant, water production and wastewater
9 treatment facilities; and that premature engineering could result in increased and unnecessary costs.

10 13. DDU attached to its motion a copy of a letter (dated December 20, 2011) from the
11 developer in the CC&N area stating that he has a continuing need for water and wastewater services
12 in the CC&N area, and that he would like for DDU to provide those services to the development.

13 14. On July 8, 2013, Staff docketed a Memorandum in response to DDU's latest request
14 for an extension of the compliance deadlines. Staff recommends approval of the extension of the time
15 deadlines from December 31, 2012 to December 31, 2014 for DDU to comply with the above
16 mentioned compliance deadlines. Staff notes that DDU did not provide an updated request for
17 service from the developer and Staff recommends that no further extensions of time to meet the
18 compliance deadlines be granted.

19 15. Although we are not adopting Staff's recommendation that no further requests for
20 extension of time to comply with Decision No. 70352 be granted, we will put DDU on notice that any
21 further requests for extensions of time to comply must demonstrate that extraordinary circumstances
22 exist that warrant additional time.

23 16. DDU's request for an extension of time to comply is reasonable and should be
24 adopted.

25 **CONCLUSIONS OF LAW**

26 1. Double Diamond is a public service corporation within the meaning of Article XV of
27 the Arizona Constitution and A.R.S. §§40-281 and 40-282.
28

1 IT IS FURTHER ORDERED that Double Diamond Utilities, Inc., is hereby on notice that any
2 future requests for extensions of time to comply with Decision No. 70352, shall demonstrate that
3 extraordinary circumstances exist that warrant additional time.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6

7 CHAIRMAN _____ COMMISSIONER
8

9
10 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER
11

12 IN WITNESS WHEREOF, I, JODI JERICH, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of
16 Phoenix, this _____ day of _____, 2013.

17 JODI JERICH _____
18 EXECUTIVE DIRECTOR

19 DISSENT _____

20 DISSENT _____
21
22
23
24
25
26
27
28

1 SERVICE LIST FOR: DOUBLE DIAMOND UTILITIES, INC.

2 DOCKET NO.: WS-20543A-07-0435

3 Michael W. Patten
4 ROSHKA, DEWULF & PATTEN PLC
5 One Arizona Center
6 400 E. Van Buren, Suite 800
7 Phoenix, AZ 85004
8 Attorneys for Double Diamond Utilities, Inc.

9 Janice Alward, Chief Counsel
10 Legal Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, AZ 85007

14 Steven Olea, Director
15 Utilities Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington
18 Phoenix, AZ 85007

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34