



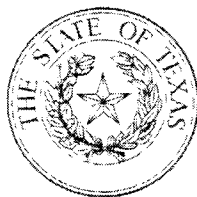
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State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

2016 MAR 29 11 34 AM
PUBLIC UTILITY COMMISSION
FILING CLERK

March 29, 2016

**TO: Stephen Journey, Director
Commission Advising and Docket Management
William B. Travis State Office Building
1701 N. Congress, 7th Floor
Austin, Texas 78701**

Courier Pick-up

**RE: SOAH Docket No. 473-14-5140.WS
PUC Docket No. 42860**

*Application of Douglas Utility Company to Change Water and Sewer
Rate/Tariff in Harris County, Texas*

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this letter, the parties to this proceeding are being served with the PFD.

Please place this case on an open meeting agenda for the Commissioners' consideration. There is no deadline in this case. Please notify me and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Frazee".

Stephanie Frazee
Administrative Law Judge

Enclosure

xc: All Parties of Record

**SOAH DOCKET NO. 473-14-5140.WS
PUC DOCKET NO. 42860**

APPLICATION OF DOUGLAS	§	BEFORE THE STATE OFFICE
UTILITY COMPANY TO CHANGE	§	
WATER AND SEWER RATE/TARIFF	§	OF
IN HARRIS COUNTY, TEXAS	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

On March 12, 2013, Douglas Utility Company (Douglas) filed an application (Application) for water and sewer rate/tariff changes. On May 12, 2013, Douglas began charging its proposed Application rates. On August 10, 2015, Douglas ceased charging its proposed rates and returned to charging its pre-Application rates. On September 2, 2015, before a hearing on the merits was held, Douglas filed notice of withdrawal of its Application. Subsequently, the parties reached a stipulation on most of the issues in the case. The parties agree that, to account for the differences between the pre-Application rates and the proposed rates, Douglas owes refunds to one customer and other customers owe a surcharge to Douglas. The remaining issue, therefore, is the time period for Douglas to pay refunds and collect surcharges. In this proposal for decision (PFD) the Administrative Law Judge (ALJ) recommends that the Commission order Douglas to pay refunds over a 12-month period and to collect surcharges over a 24-month period.

I. JURISDICTION AND NOTICE

The Public Utility Commission of Texas (Commission) has jurisdiction over this proceeding pursuant to Texas Water Code §§ 13.001, 13.041-.042, and 13.181. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters relating to the conduct of this proceeding, including preparation of this PFD, pursuant to Texas Utilities Code § 14.053, Texas Water Code §§ 5.311 and 13.041(c-1), and Texas Government Code § 2003.049. The record closed on February 19, 2016, after submission of the parties' proposed findings of fact and

conclusions of law and the agreed Exhibit A, attached to this PFD as a disk,¹ which provides account reconciliations and the parties' agreement regarding Douglas's refunds owed and surcharges due.

II. PROCEDURAL HISTORY AND BACKGROUND

On March 12, 2013, Douglas filed its Application with the Texas Commission on Environmental Quality (TCEQ). On November 19, 2013, TCEQ referred the case to SOAH. The parties to the case were Douglas, the Executive Director (ED) of the TCEQ, the Office of Public Interest Counsel (OPIC), Fountainview Homeowners Association (Fountain view), and Rainbow Housing Assistance Corporation/Equality Community Housing Corporation (Equality).

The case was referred to mediation on June 6, 2014. On August 4, 2014, the SOAH mediator reported in writing that an agreement had been reached and that the ED would be filing a motion to remand the matter to the TCEQ.² On July 30, 2014, the ED filed a Motion to Dismiss and Remand. On July 31, 2014, Douglas filed a response opposing the motion, which stated that after the mediation, Douglas discovered that the settlement rates would put Douglas in a "negative cash flow situation."³ The ALJ issued Order No. 3, denying the motion to remand.

On August 28, 2014, the ED filed a motion for reconsideration asking the ALJ to reverse her ruling in Order No. 3 and dismiss and remand the matter. Effective September 1, 2014, the transfer of economic jurisdiction over water and sewer utilities from TCEQ to the Commission

¹ On March 14, 2016, Staff filed an amended Exhibit A, which was agreed to by the parties. That version of Exhibit A is attached to this PFD.

² During the mediation, Douglas and the other parties determined that Douglas had double-billed the fees charged by the City of Houston under the City's Groundwater Reduction Plan. Thereafter, Douglas revised its billings so the Groundwater Reduction Plan fee was charged correctly. The issue of refunds for the over-collected fees was carried along in this case to be resolved in the final order. The parties have agreed to the amount of refunds due for these over-collected fees, and those refunds are included in Exhibit A to this PFD.

³ Douglas Utility Company's Response to the Executive Director's Motion to Dismiss and Remand (Sept. 4, 2014).

took effect. On that date, the ED and OPIC ceased to be parties and Commission Staff became a party to this case.⁴

On September 2, 2014, Equality filed a motion for reconsideration or in the alternative a motion for summary disposition or a request for certification of an issue to the Commission. On the same day, Equality filed an appeal of SOAH Order No. 3 with the Commission. Staff filed a response supporting Equality's appeal, and Douglas late-filed a response opposing the appeal.

On September 16, 2014, the ALJ denied Equality's motion to reconsider and alternative requests for summary disposition or to certify an issue to the Commission. On October 29, 2014, the Commission denied Equality's appeal and ordered a limited evidentiary hearing on whether the settlement agreement contained rates that violated Texas Water Code § 13.183(a).

The SOAH hearing date was set for August 4-7, 2015. The hearing was continued, and a prehearing conference was held on September 1, 2015. During the prehearing conference, Douglas announced that it was withdrawing its Application and that it had returned to charging its pre-Application rates. Douglas filed a Notice of Withdrawal of Application for Rate/Tariff Change and Proposed Disposition of Incremental Revenues on September 2, 2015.⁵

Douglas collected the proposed rates from May 12, 2013, to August 10, 2015, a period of 27 months. Douglas has approximately 456 water connections and 432 sewer connections.⁶

⁴ In addition, SOAH Docket No. 582-14-1052 became SOAH Docket No. 473-14-5140.WS, and TCEQ Docket No. 2013-1735.UCR became PUC Docket No. 42860.

⁵ The notice explained that Douglas was founded by Herbert Zieben, who is deceased. After Mr. Zieben's death, his widow, Carol Zieben, began managing Douglas. Ms. Zieben controlled Douglas during the test year and the subsequent preparation and filing of the Application. During this time, Mr. Zieben's estate was the subject of a probate contest in Harris County. As a result of that litigation, Mr. Zieben's sons, Lee Zieben and Alan Zieben, gained control of Douglas. Mssrs. Zieben decided to withdraw the Application and resume charging the rates that were in effect prior to the Application being filed, which were the most recent state-approved rates. Mssrs. Zieben plan to operate Douglas for at least a 12-month test year while they attempt to rehabilitate the sewer treatment plan. After accumulating adequate test year data, they intend to file a new rate application.

⁶ Application at 13, 26.

III. TIME PERIOD FOR IMPLEMENTING REFUNDS AND SURCHARGES

The only remaining issue in the case is the time periods for Douglas to pay refunds to the customer that was overcharged under the proposed, but withdrawn, rates and for the undercharged customers to pay surcharges to Douglas. A telephone conference was held on January 22, 2016, for the parties to present oral argument and provide applicable precedent to support their positions regarding the time period for Douglas to pay refunds and collect surcharges.

A. The Parties' Arguments

Douglas argued that the time period for refunds should be the same amount of time over which overcharges were collected. Douglas stated that such an approach is consistent with "the long-time precedent that has been in effect for decades that refunds and surcharges are made over the same number of months that the proposed rates were charged."⁷ Douglas also argued that under Texas Water Code §§ 13.189-.190, all customers have to be treated fundamentally the same. Therefore, refunds and surcharges should take place over the same amount of time. It is Douglas's position that paying refunds to some customers during a shorter period of time than the time period for other customers to pay surcharges would be unfair and contrary to the Texas Water Code.

Equality⁸ argued that customers should be permitted to pay surcharges to Douglas over the same amount of time that Douglas charged the Application rates because those customers are individuals who would probably not be able to afford to make payments over a shorter period of time. Equality also argued that refunds should be paid by Douglas over a six-month period. Equality noted that for electric and telephone utilities, the Public Utility Regulatory Act (PURA) contemplates a refund period of three months.⁹ Equality recognized that PURA is not

⁷ Hearing recording at 22:32.

⁸ Equality's attorney was authorized to speak on behalf of Karl E. Wolf, representative of Fountainview, at the telephone conference. Hearing recording at 40:23.

⁹ PURA § 17.152(a)(3).

controlling for water utilities but suggested that it may provide precedent in this situation. Therefore, Equality argued that a six-month refund period was a fair compromise and that paying over six months would not jeopardize Douglas's financial integrity.

Staff stated that there is currently no Commission precedent regarding the appropriate time periods for a water and sewer utility to make refunds to its customers. Staff also noted that time periods set out for electric and telecommunications utilities to make refunds may not be appropriate time periods to apply to water and sewer utilities. Staff argued that water and sewer utilities are usually smaller companies, and the refunds are likely to make up a much larger percentage of a smaller utility's revenues. Staff recommended a six-month refund period but stated that it would be open to a 12 or 15 month period if that would be necessary for Douglas's financial integrity.¹⁰ However, Staff noted that the refunds should be made as soon as possible because this case has been pending for so long.

Douglas agreed with Staff that it would be inappropriate to apply the refund time periods for electric and telecommunications utilities to water and sewer utilities because they are regulated under different codes and are not comparable companies. Douglas also argued that it would be inappropriate to shorten the refund period to be less than the period of time that the overcharges were made because that would require Douglas to pay refunds while simultaneously charging lower rates as well as collecting surcharges over a longer time period than the refunds would be paid out.

B. The Stipulation

The parties conferred and reached an agreement as to the amounts of the refunds to be paid and the surcharges to be collected by Douglas, which are shown in the following table:¹¹

¹⁰ Douglas declined to provide such information during the telephone conference, stating that a full evidentiary hearing would be necessary in order for Douglas to provide information regarding its financial integrity. However, the parties agreed that an evidentiary hearing was neither necessary nor desirable given the length of time that the case has already been pending. Hearing recording at 43:30-46:40.

¹¹ See Exhibit A, attached.

Customer	Amount
Haverstock Hills Apartments ¹²	\$389,689.28
Customers with 2" meters	(\$18,044.52)
Customers with 1" meters	(\$836.30)
Customers with 5/8" meters	(\$72,474.73)
Total	\$298,333.73

C. Analysis

Based on the parties' arguments and prior cases involving refunds made by sewer and water utilities, it appears that the appropriate time period for refunds and surcharges is determined on a case-by-case basis. In the *Application of HHJ, Inc. d/b/a Decker Utilities to Change Water and Sewer Rates*, the ALJ's recommended rates were less than the rates that HHJ, Inc. d/b/a Decker Utilities (HHJ) had been charging during the pendency of its application. Therefore, the TCEQ ordered HHJ to pay refunds of the difference to its customers. In that case, the TCEQ ordered HHJ to pay refunds of \$12.58 per customer per month for the water system and \$21.94 per customer per month for the sewer system over 24 months.¹³ Overcharges had been made over a 38-month period.¹⁴

In the *Application of Suburban Utility Company for a Water Rate/Tariff Change Under Certificate of Convenience and Necessity No. 10835 in Harris County, Texas*, the Commission denied Suburban Utility Company's (Suburban) application to increase its rates and ordered it to make refunds to its customers of a monthly surcharge and miscellaneous fees.¹⁵ Suburban paid

¹² Equality owns Haverstock Hills Apartments.

¹³ *Order Approving the Application of HHJ, Inc. d/b/a Decker Utilities to Change Water and Sewer Rates*, TCEQ Docket No. 2008-0164-UCR, SOAH Docket No. 582-08-1719 (Apr. 19, 2011) at COL No. 12.

¹⁴ *Id.* at Explanation of Changes No. 6. The total amount of money to be refunded, including interest, was approximately \$449,036.16 based on the amount per customer per month times 542 connections. *Id.* at FOF No. 21, COL No. 12.

¹⁵ *Application of Suburban Utility Company for a Water Rate/Tariff Change Under Certificate of Convenience and Necessity No. 10835 in Harris County, Texas*, Docket No. 42859, Order (May 1, 2015) at Ordering Paragraph 3.

the entirety of the refunds owed over the course of three months.¹⁶ The total amount of refunds paid was \$184,790.37.¹⁷

These two cases illustrate the wide range of appropriate time periods for a water and sewer utility to make refunds to its customers after collecting overcharges. In this case, the ALJ finds that it is appropriate for Douglas to pay refunds over a period of 12 months. Six months, as suggested by Staff and Equality, will require Douglas to pay its customers at a higher rate each month, which could impact its ability to rehabilitate its sewer system as planned. The ALJ finds that a time period longer than 12 months would unduly lengthen the amount of time that the customers have been owed money, since the proposed rates were charged for 27 months, and Douglas has continued to have the benefit of the overcharges for an additional eight months after it returned to charging the pre-Application rates. The ALJ also finds that it is appropriate for Douglas to collect surcharges from the customers that paid less under the Application rates over the course of 24 months. This longer time period is necessary because these customers are individual residential customers who may not be able to afford to pay higher surcharges over a shorter period of time.

IV. RECOMMENDATION

The ALJ recommends that the Commission order Douglas to pay refunds over a 12-month period and to collect surcharges over a 24-month period.

¹⁶ *Compliance Docket Related to Refunds from Docket No. 42859, Docket No. 44681, Suburban Utility Co's Summary and Response to and Notice of Compliance with Order No. 1 in this Case (Oct. 18, 2015).*

¹⁷ *Id.*

V. PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

A. Findings of Fact

Procedural History

1. On March 12, 2013, Douglas Utility Company (Douglas) filed with the Texas Commission on Environmental Quality (TCEQ) a notice of intent to change rates for water and sewer service (Application). Douglas's proposed rates went into effect on May 12, 2013.
2. Douglas mailed notice of the proposed rate change to all of its customers on or about March 10, 2013. All customers of the utility were affected by the noticed increase.
3. The TCEQ referred this matter to the State Office of Administrative Hearings (SOAH) on November 19, 2013.
4. On February 3, 2014, the Administrative Law Judge (ALJ) designated Douglas, the Executive Director (ED) of the TCEQ, the Office of Public Interest Counsel (OPIC), Fountainview Homeowners Association (Fountainview), and Rainbow Housing Assistance Corporation/Equality Community Housing Corporation (Equality) as parties.
5. On July 29, 2014, Douglas, the ED, OPIC, Fountainview, and Equality participated in mediation at SOAH and agreed on new water and sewer service rates.
6. On July 29, 2014, during the mediation, Douglas and the other parties determined that Douglas had double-billed the fees charged by the City of Houston under the City's Groundwater Reduction Plan. Thereafter, Douglas revised its billings so the Groundwater Reduction Plan fee was charged correctly. The issue of refunds for the over-collected fees was carried along in this case to be resolved in the final order.
7. On July 30, 2014, the ED filed a Motion to Dismiss and Remand because the parties had agreed during mediation to the water and sewer rates to be charged.
8. On July 31, 2014, Douglas filed its response to the ED's Motion to Dismiss and Remand, asserting that it was withdrawing from the settlement because, after signing the agreement, Douglas determined that the agreed rates would result in a negative cash flow. Douglas also asserted that it could not provide continuous and adequate service if it could not pay its bills.
9. On September 1, 2014, jurisdiction over this proceeding transferred by statute from the TCEQ to the Public Utility Commission of Texas (Commission). As of that date, the ED and OPIC were no longer parties to the case, and Staff became a party to the case.

10. On October 29, 2014, the Commission ordered that a limited evidentiary hearing was necessary to determine whether the settlement rates in this proceeding violate Texas Water Code § 13.183(a).
11. On September 2, 2015, before an evidentiary hearing was held, Douglas filed its written notice to withdraw its Application.
12. The parties conferred on the amount of refunds that would be due to, and the amount of surcharges due from, customers charged the proposed rates before the Application was withdrawn. A stipulation of the amounts of refunds and surcharges and to whom they should be paid was reached as shown in Exhibit A.
13. On August 10, 2015, Douglas ceased charging its Application rates and returned to charging the pre-Application rates that were in effect immediately prior to May 12, 2013.

The Stipulation

14. As stipulated by the parties, it is reasonable that Douglas refund the incremental difference collected from customers between the rates in effect before the March 12, 2013 rate change Application and the rates collected under the proposed rates in the March 12, 2013 rate change Application so these customers would not have paid more for the service they received than they would have paid under the pre-Application rates.
15. As stipulated by the parties, it is reasonable that Douglas refund the over-collection of fees charged by the City of Houston for its Groundwater Reduction Plan collected between May 12, 2013, and August 12, 2014.
16. As stipulated by the parties, it is reasonable that Douglas surcharge customers who underpaid to recover from those customers the revenues to which the utility was entitled under its pre-Application rates.
17. The stipulated amounts of fees and overcharges and undercharges, including applicable interest, where applicable, are set forth below (and in the attached Exhibit A):

Customer	Amount
Haverstock Hills Apartments	\$389,689.28
Customers with 2" meters	(\$18,044.52)
Customers with 1" meters	(\$836.30)
Customers with 5/8" meters	(\$72,474.73)
Total	\$298,333.73

18. The parties stipulate that the only issue of contested fact or law in this case concerns the period over which the refunds and/or surcharges in Exhibit A shall be made.

Refunds and Surcharges

19. It is reasonable that Douglas refund over-collections with interest as calculated in Exhibit A over a period of 12 months.
20. It is reasonable that Douglas surcharge under-collections as calculated in Exhibit A over a period of 24 months.

B. Conclusions of Law

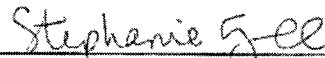
1. Douglas is a water and sewer utility under Texas Water Code § 13.002(23).
2. Before September 1, 2014, the TCEQ was the state agency with regulatory jurisdiction over this proceeding.
3. Beginning September 1, 2014, regulatory jurisdiction transferred to the Commission pursuant to House Bill 1600 and Senate Bill 567 (83rd Legislature, Regular Session).
4. The Commission has jurisdiction over this proceeding. Tex. Water Code ch. 13, subch. F.
5. Douglas filed its March 12, 2013 Application under the authority of Texas Water Code § 13.187.
6. Douglas is authorized to withdraw its Application subject to making appropriate refunds and surcharges as shown in Exhibit A.
7. Because the final order in this docket, after the withdrawal of the Application, will result in rates less than Douglas proposed and collected during the pendency of the Application, Douglas must refund over-collections with interest in the manner prescribed by the Commission. Tex. Water Code § 13.187(k).
8. Because the final rates for small meter customers will be less than Douglas charged during the pendency of this case, Douglas is entitled to surcharges from under-paying customers. Tex. Water Code § 13.187(k).

C. Ordering Paragraphs

In accordance with the above findings of fact and conclusions of law, the Commission issues the following Order:

1. Douglas's Application for a water rate/tariff is withdrawn effective September 2, 2015.
2. Effective August 10, 2015, Douglas shall charge the historic rates in place prior to its March 12, 2013 Application.
3. Within 12 months after this order is signed, Douglas shall make all refunds shown in Exhibit A.
4. Within 24 months after this order is signed, Douglas shall collect all surcharges shown in Exhibit A.
5. Within 30 days of effectuating the ordered refunds, Douglas shall file proof of the same in *Douglas Utility Company Water and Sewer Rate/Tariff Refunds/Surcharges Compliance Docket*, Docket No. _____ .
6. All other motions, requests for entry of specific findings of fact and/or conclusions of law, and other requests for general or specific relief, if not expressly granted, are denied.

SIGNED March 29, 2016.



STEPHANIE FRAZEE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS