



Control Number: 42860



Item Number: 119

Addendum StartPage: 0

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

RECEIVED
2016 APR 13 AM 10:16

APPLICATION OF DOUGLAS §
UTILITY COMPANY TO CHANGE §
WATER AND SEWER RATE/TARIFF §
IN HARRIS COUNTY, TEXAS §
§

PUBLIC UTILITY COMMISSION
BEFORE THE STAFF OFFICE
OF
ADMINISTRATIVE HEARINGS

**DOUGLAS UTILITY COMPANY'S EXCEPTIONS
TO PROPOSAL FOR DECISION**

Comes now Douglas Utility Company (DUC) and files this its Exceptions to the Proposal for Decision.

There is only one contested issue in this case, all other issues having been resolved by stipulation between the parties. The sole issue is the length of time DUC will make refunds with interest to customers who have been over-charged during the pendency of this case and how long DUC will surcharge without interest customers who under-paid during the pendency of this case.

The Administrative Law Judge (ALJ) has found in Finding of Fact No. 19 that it is reasonable that DUC refund over-collections with interest over a period of twelve months. The ALJ found, in Finding of Fact No. 20, that it is reasonable for DUC to surcharge under-collections over a period of twenty-four months. Nowhere in her Proposal for Decision (PFD) does the ALJ identify specific evidence in this record that supports her findings and proposed order. Such an order violates the requirements of the Texas Administrative Procedures Act, Government Code 2001.060. For and order of the Commission in a contested case, when the Commissioners themselves did not hear the proceedings, there must be a PFD based upon evidence admitted into the record under the requirements of the Texas Rules of Evidence. For

119

these reasons alone, the PFD must be rejected and the Commission must render an order based upon the record evidence or remand this case for more proceedings on this issue.

There are other reasons why the ALJ's proposal on the issue of refunds/surcharges is incorrect. First, Texas Water Code (TWC) Section 13.001(c) mandates that the orders and rules of the regulatory authority must equitably balance the interests of customers and the utility. The ALJ's PFD violates this standard because it requires the utility to provide accelerated and preferential refunds to one group of customers with interest while denying the utility the opportunity to collect surcharges for under-payments over the same period with interest.¹

Second, the PFD and proposed order violate TWC 13.189 and 13.190 because they provide preferential treatment to one class of customers, i.e., Rainbow Housing Assistance Corporation/Equality Community Housing Corporation (Equality). Without discussing or identifying any record evidence supporting her findings, the ALJ says that Equality should get a refund of over-charges over a period much less than the period the over-charges occur. This preference was granted notwithstanding the benefit of interest on those refunds at the rate the legislature and the PUC have said were reasonable in today's capital markets. There is nothing in the record to support a short term for refunds to Equality other than Equality's argument that they want their money faster.

Third, the PFD assumes that there is an unlimited pot of dollars existing somewhere that can be used to meet the operating costs of the utility while making accelerated refunds and

¹ TWC 13.187(r) requires interest to be paid on refunds of over-collections during the pendency of a rate case. There is no comparable provision in the TWC about interest on surcharges. DUC submits that this is an area left by the legislature to the discretion of the Commission based upon the record evidence. There is a real identifiable cost to the utility from the time delay of collecting monies for services already rendered. Consistent with the equality of interest provisions of TWC 13.001(c), DUC believes that the same rate of interest paid to customers on refunds should be imposed upon customers for surcharges.

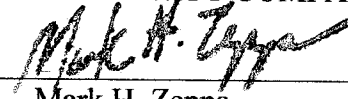
collecting extended surcharges and rehabilitating a seriously deteriorated wastewater treatment plant (WWTP). TWC 13.183(2) requires that all orders of the Commission in rate cases ensure the financial integrity of the utility. Without this statutory check on the awesome powers of the regulatory authority, an agency could inadvertently or deliberately enter orders that it knows will bankrupt the utility. Such an order is confiscatory of the utility's capital in violation of Texas Constitution Article I, Section 17. It also penalizes the customers of that utility whose service can reasonably be expected to deteriorate to some degree as the utility goes down the financial drain. In this case, it is undisputed that the WWTP must immediately undergo repairs or replacement at a cost of up to \$1,000,000.00. What is more important from the regulatory policy aspect – making a rapid refund to Equity with interest, or having all the tenants of Equity's apartment complex denied sewer service? There is no alternative but DUC; no other utility has facilities within a reasonable distance and should such a utility exist, it may not encroach into DUC's certificated service area.² It is clear to DUC that the treatment proposed for refunds/surcharges will have an adverse effect on the utility's financial integrity while creating the potential for a massive disruption of services to the entire sewer CCN area.

WHEREFORE PREMISES CONSIDERED, DUC respectfully prays that the period of refunds and surcharges in this case be set over the same number of months the proposed rates were charged. If this relief is not granted, DUC prays that it be allowed to charge interest on surcharges at the same rate imposed by statute and rule on refunds.

² TWC 13.041(d)(2) permits the Commission to order an emergency interconnect between two neighboring retail public utilities. This order is limited to ninety days and there are no provisions to extend it in the law. DUC suggests that rehabilitating or replacing the WWTP in the event of a failure will take more than ninety days. The TCEQ plans review process usually takes that long alone.

Respectfully submitted,

DOUGLAS UTILITY COMPANY



By: Mark H. Zeppa
State Bar No. 22260100
Law Offices of Mark H. Zeppa, PC
4833 Spicewood Springs Road #202
Austin, Texas 78759-8435
(512) 346-4011, Fax (512) 346-6847

CERTIFICATE OF SERVICE

I certify that on April 13, 2016, a copy of this documents will be served on all parties of record in accordance with P.U.C. Procedural Rule 22.74.



Mark H. Zeppa