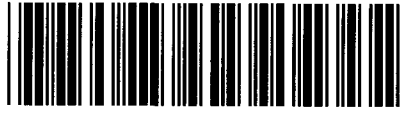




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APPLICATION OF DOUGLAS  
UTILITY COMPANY TO CHANGE  
WATER AND SEWER RATE/TARIFF  
IN HARRIS COUNTY, TEXAS

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PUBLIC UTILITY COMMISSION  
BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

**EQUALITY COMMUNITY HOUSING CORPORATION'S  
REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION FILED  
BY DOUGLAS UTILITY COMPANY**

Equality Community Housing Corporation ("Equality") files this Reply to the Exceptions to the Proposal for Decision ("Exception") filed by Douglas Utility Company ("DUC"). Equality supports and concurs with the Administrative Law Judge's ("ALJ") Proposal for Decision ("Proposal"), which establishes the time periods by which DUC must pay refunds and collect surcharges. Equality contends that the ALJ has the discretion and legal authority to establish these time periods and disagrees with the assertions made by DUC. In support thereof, Equality would show as set forth below.

On or around March 14, 2016, DUC, Equality and the Public Utility Commission of Texas ("Commission") agreed upon the amount of refunds DUC owes and the surcharges DUC is due. Therefore, the only issue before the ALJ was the time period which the refunds and/or surcharges were to be made. The ALJ established in Findings of Fact No. 19 that DUC should refund the over-collections over a 12-month period. The ALJ established in the Findings of Fact No. 20 that DUC should surcharge the applicable customers over a period of 24 months.

It is within the ALJ's discretion to establish the time period by which DUC should issue the refunds and apply the surcharge because there is no controlling Commission rule or precedent. The Commission Staff stated during the January 22, 2016 telephone conference call that "there is currently no Commission precedent regarding the appropriate time periods for a water and sewer

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utility to make refunds to its customers.”<sup>1</sup> Therefore, without a rule of law or controlling agency regulation, the ALJ must consider the facts of the case in order to issue a decision. The ALJ illustrates this authority by comparing two different water rate/tariff application cases where the time period the particular ALJ imposed upon the utility to refund its customers was vastly different.<sup>2</sup>

In reaching the time periods for DUC’s surcharge/refund, the ALJ took into consideration the facts surrounding the issue. The ALJ describes on page 4-5 and 7 of the PFD the evidence and facts relied upon for Findings of Fact No. 19 and 20.<sup>3</sup> On pages 4-5, the ALJ lists each argument made by DUC, Equality and the Commission Staff during the conference call on January 22, 2016 regarding the extent of time DUC should reimburse/surcharge.<sup>4</sup>

The PFD specifically mentions that DUC argued that “all customers have to be treated fundamentally the same” and 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.”<sup>5</sup> The ALJ also considered the arguments made by Commission Staff, wherein the 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 revenue,” but that “the refunds should be made as soon as possible because this case has been pending for so long.”<sup>6</sup>

On page 7 of the PFD, the ALJ demonstrates her analysis of each party’s arguments and her final reasoning for determining the DUC time frame.<sup>7</sup> The ALJ states that a six-month period

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<sup>1</sup> Proposal for Decision, issued by Administrative Law Judge Stephanie Frazee, on March 29, 2016, in PUC Docket No. 42860, page 5.

<sup>2</sup> *Id.* at page 6–7.

<sup>3</sup> *Id.* at page 4–5, 7.

<sup>4</sup> *Id.* at page 4–5.

<sup>5</sup> *Id.* at page 4.

<sup>6</sup> *Id.* at page 5.

<sup>7</sup> Proposal for Decision, issued by Administrative Law Judge Stephanie Frazee, on March 29, 2016, in PUC Docket No. 42860, page 7.

of time for a refund, as requested by Equality, “could impact [DUC’s] ability to rehabilitate its sewer system planned” while a “period longer than 12 months would unduly lengthen the amount of time the customers have been owed money.”<sup>8</sup> The ALJ further states that DUC has “continued to have the benefit of the overcharges for an additional eight months after” DUC returned to assessing its pre-Application rates.<sup>9</sup> The ALJ also explained that a 24-month period for the surcharge was appropriate, rather than the 12 months, because the residents subject to the surcharge are individuals, and may “not be able to afford paying higher surcharges over a shorter period of time.”<sup>10</sup> Thus, the Commission should adopt the PFD and its proposed findings of fact, conclusions of law, and ordering paragraphs.

DUC asserts the ALJ violated Texas Government Code Section 2001.060 because the ALJ did not identify specific evidence to support the findings and proposed order. However, evidence to support the time frame is throughout the ALJ’s PFD, and within her analysis on page 7 of the PFD. The ALJ discusses that a time frame of six months to impose a refund would be overly burdensome to DUC while a time frame of over 12 months to issue a refund would unduly impose upon the rights of the overly charged customers.<sup>11</sup> The ALJ also discusses how a time frame shorter than 12 months to assess a surcharge may overly encumber the applicable individual residents.<sup>12</sup>

DUC also asserts that the ALJ violates Texas Water Code Section 13.001(c), 13.189 and 13.190 by claiming that the PFD does not “equitably balance the interests of” customers and the DUC and that the PFD provides preferential treatment to Equality. DUC is mistaken.

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Proposal for Decision, issued by Administrative Law Judge Stephanie Frazee, on March 29, 2016, in PUC Docket No. 42860, page 7.

Section 13.001(c)<sup>13</sup> provides that the purpose of Chapter 13 of the Water Code is to provide a statutory framework to regulate the retail public utilities and “assure rates, operations, and services ... are just and reasonable to the consumers and to the retail public utilities.”<sup>14</sup> As support of the time period’s reasonableness, the ALJ points to the fact that DUC has had the overcharges from the proposed rate for an additional eight months, and that the undercharged customers may not have the ability to pay higher surcharges over a shorter period of time.<sup>15</sup> The PFD also considers the amount of time the customers, who are owed a refund, have been waiting.<sup>16</sup>

DUC additionally argues that the PFD violates Texas Water Code Section 13.183(2).<sup>17</sup> However, DUC incorrectly characterizes this section.<sup>18</sup> Section 13.183 does not apply to refunds or surcharges.<sup>19</sup> Section 13.183 governs water/sewer rates fixed by either the Commission, the Texas Commission on Environmental Quality, or the governing body of a municipality, and requires such rates to “preserve the financial integrity of the utility.”<sup>20</sup>

Additionally, DUC claims that the time period for refunds could jeopardize the financial integrity of the utility and require DUC to forgo necessary repairs to its wastewater treatment plant. When DUC began assessing the proposed Application rates on May 12, 2013, it argued that the rates were intended to service a loan for the construction of a wastewater treatment plant.<sup>21</sup> However, after charging the proposed Application rates for 27 months, DUC has not began

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<sup>13</sup> TEX. WATER CODE § 13.001(c).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Proposal for Decision, issued by Administrative Law Judge Stephanie Frazee, on March 29, 2016, in PUC Docket No. 42860, page 7.

<sup>17</sup> DUC asserts on page 3 of the Exception that Equality violates Tex. Water Code Section 13.183(2). However, the only subsection (2) within Section 13.183 is Section 13.183(a)(2). Therefore, Equality responds to DUC’s argument as if DUC cited Section 13.183(a)(2).

<sup>18</sup> TEX. WATER CODE § 13.183(a)(2).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> As explained in Douglas Utility Company’s Response to Interrogatory No. 6 in the Public Utility Commission of Texas’ Executive Director’s First Requests for Disclosure, Interrogatories, and Requests for Production.

constructed on a new wastewater treatment plant. Accordingly, DUC should have the necessary funds on hand to provide reimbursement.

Lastly, DUC requests the Commission vacate the ALJ's proposed time frame and require the refunds and surcharges to be implemented over the same time frame DUC's proposed Application rates were imposed. However, the Commission may only vacate or change an ALJ's findings of fact or conclusions of law if one of the following is sufficed:

- (1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided ... [by the state agency], or prior administrative decisions;
- (2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
- (3) that a technical error in a finding of fact should be changed.<sup>22</sup>

As explained by Equality and the Commission Staff during the telephone conference call held on January 22, 2016, there is no controlling precedent regarding the amount of time the Commission must provide a utility to obtain a surcharge or provide a reimbursement. The ALJ clarified the lack of precedent by determining on page 6 of the PFD that "...the appropriate time period for refunds and surcharges is determined on a case-by-case basis."<sup>23</sup> The ALJ outlines two separate cases within the PFD on page 6 that further demonstrate the amount of time a utility is provided to refund/surcharge is within the ALJ's discretion because it depends upon the facts of the given case.<sup>24</sup> Additionally, the ALJ's Findings of Facts that establish the time frame are not technical and do not rely upon technical facts; rather, the ALJ issued the time frame after considering the specific facts of this case.

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<sup>22</sup> TEX. GOV. CODE § 2001.058(e).

<sup>23</sup> Proposal for Decision, issued by Administrative Law Judge Stephanie Frazee, on March 29, 2016, in PUC Docket No. 42860, page 6.

<sup>24</sup> *Id.*

**Request for Relief**

For the foregoing reasons, Equality Community Housing Corporation supports the Administrative Law Judge's Proposal for Decision and respectfully requests that the Public Utility Commission of Texas adopt the Proposal for Decision and its proposed findings of fact, conclusions of law, and ordering paragraphs. Equality requests all further relief to which it may be entitled.

Respectfully submitted,

By: Phil Haag / by permission  
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Phil Haag (SBN 08657800)  
phaag@mcginnislaw.com  
Carl R. Galant (SBN 24050633)  
cgalant@mcginnislaw.com  
MCGINNIS LOCHRIDGE  
600 Congress Avenue, Suite 2100  
Austin, Texas 78701  
(512) 495-6000  
Fax (512) 495-6093

**ATTORNEYS FOR EQUALITY COMMUNITY  
HOUSING CORPORATION**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served as indicated below upon the following on the 29<sup>th</sup> day of April, 2016.

Mark Zeppa  
4833 Spicewood Springs Rd., #202  
Austin, TX 78759  
512 346-4011  
Attorney for Douglas Utility Company

E-mail: markzeppa@austin.twcbc.com

J.J. Smith

E-mail: jjsmith@austin.twcbc.com

Karl E. Wolf  
Fountainview Homeowners Association  
5523 Mendota lane  
Houston, TX 77032  
713-301-7149

E-mail: kwolffsr@att.net

Mandeep Chatha  
Legal Division  
Public Utility Commission  
1701 N. Congress Avenue, Suite 8-110  
Austin, TX 78711

E-mail: mandeep.chatha@puc.texas.gov

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Phil Haag