



Control Number: 42860



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SOAH DOCKET NO. 473-14-5140
DOCKET NO. 42860
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APPLICATION OF DOUGLAS
UTILITY COMPANY TO CHANGE
WATER AND SEWER RATE/TARIFF
IN HARRIS COUNTY, TEXAS

§ PUBLIC UTILITY
§ PUBLIC UTILITY
§ FILING CLERK
§ COMMISSION OF TEXAS

COMMISSION STAFF'S REPLY TO EXCEPTIONS

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Commission Staff's Reply to Exceptions. In support thereof, Staff states the following:

I. Background

On or around March 14, 2016, Douglas Utility Company (DUC), Equality Community Housing Corporation (Equality) and Staff agreed upon "Staff's Amended Exhibit A" as the amount of refunds due to customers and the surcharges owed to DUC. The only issue before the Administrative Law Judge (ALJ) was the time period over which the refunds and/or surcharges were to be made.

II. DUC's Exceptions to the PFD

A. Evidence in the Record supporting the PFD

In DUC's Exceptions¹ to the Proposal for Decision (PFD), DUC states that the ALJ does not identify specific evidence in this record that supports her findings and the proposed order. However, Staff notes and as Equality has described in their Reply to Exceptions², the ALJ considered the specific facts of this case and the arguments presented by the parties at the pre-hearing conference. Specifically, the ALJ states that a six-month period 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."³ Further, the ALJ states that DUC has "continued to have the benefit of

¹ Douglas Utility Company's Exceptions to the Proposal for Decision at 1.

² See generally, Equality Housing Corporation's Reply to Exceptions to the Proposal for Decision filed by Douglas Utility Company.

³ Application of Douglas Utility Company to Change Water and Sewer rate/tariff in Harris County, Docket No. 42860, Proposal for Decision at 7 (Mar. 29, 2016) (PFD).

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the overcharges for an additional eight months after” DUC returned to assessing its pre-Application rates.⁴ Finally, the ALJ reasoned 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.”⁵ Therefore, DUC’s argument that the ALJ didn’t appropriate consider the evidence in the record is incorrect.

B. Financial Integrity of DUC

DUC cannot claim its financial integrity will be compromised when the Commission has already given DUC an opportunity to present that argument and DUC has voluntarily chosen to withdraw their application. Alleging harm to financial integrity is a serious accusation and should not be alleged without a good faith belief based upon actual facts.

DUC initially entered into a settlement disposing of all issues in this rate case on or around August 4, 2014. However, prior to the Commission’s approval of the settlement DUC withdrew and then asked the Commission to set aside that settlement based upon DUC’s allegation that the settlement that the utility had agreed to would harm its financial integrity. At the September 26, 2014 Open Meeting, the Commission voiced serious concerns with allowing a utility to withdraw from its own settlement agreement. However, out of an abundance of caution, the Commission remanded the case to SOAH for a limited hearing on whether the settlement would harm the utility’s financial integrity.

Before the case ever went to hearing on financial integrity, DUC chose to withdraw its rate increase application. No evidence was ever admitted into the record. DUC never requested a hearing on the refund period and never requested to admit evidence on the refund period. Now, only after an adverse ruling, DUC once again alleges that the utility’s financial integrity would be harmed by the timing of refunds and surcharges to customers of revenues DUC agrees that it has over-recovered.

DUC has waited almost two years later until this Order has come before the Commission to again delay the resolution of this docket with another argument about financial integrity. DUC’s

⁴ *Id.*

⁵ *Id.*

allegations of harm to the utility's financial integrity were never raised in hearing and are unsupported by any factual evidence.

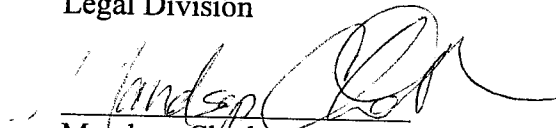
III. Conclusion

Staff respectfully recommends the Commission adopt the PFD in full.

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

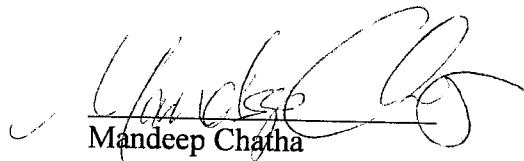
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CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on this April 29, 2016 in accordance with 16 TAC § 22.74.



Mandeep Chatha