



Control Number: 42860



Item Number: 23

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EQUALITY COMMISSION
CHIEF CLERK

August 5, 2014

Chief Clerk
Texas Commission on Environmental Quality
TCEQ
Office of the Chief Clerk, MC 105
P.O. Box 13007
Austin, TX 78711-3087

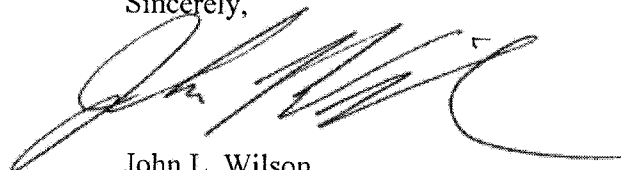
Re: TCEQ Docket No. 2013-1735-UCR; SOAH Docket No. 582-14-1052

Dear Chief Clerk, TCEQ:

Please find enclosed for filing in the above-referenced matter Equality Community Housing Corporation's Motion to Dismiss and Remand the Case. The motion will be electronically filed with the both the TCEQ Chief Clerk and with the State Office of Administrative hearings.

Thanks for your assistance in this matter

Sincerely,



John L. Wilson

JLW/jlw
Enclosure

cc: Service List

23

**SOAH DOCKET NO. 582-14-1052
TCEQ DOCKET NO. 2013-1735-UCR**

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

**EQUALITY COMMUNITY HOUSING CORPORATION'S MOTION TO
DISMISS AND REMAND THE CASE**

Equality Community Hosing Corporation (Equality),¹ by and through its attorneys and pursuant to Texas Practice and Remedies Code § 154.071(a), 7 Texas Administrative Code (TAC) § 155.415, 30 TAC § 40.8, and other applicable authority, hereby moves to the Administrative Law Judge (ALJ), Penny Wilkov, to dismiss the case from SOAH's docket and remand it to the Executive Director of the Texas Commission on Environmental Quality (ED) for approval of tariffs and rates in accordance with the terms of the parties mediated settlement agreement.

Background

Prior to holding an evidentiary hearing on the above referenced case, the case was referred to mediation to a State Office of Administrative Hearings (SOAH) mediator. On July 29, 2014, the parties participated in mediation and entered into a settlement agreement (Settlement Agreement).² Brian MacLeod, Texas Commission on Environmental Quality

¹ Prior filings have been made on behalf of Haverstock Hills Apartments by Rainbow Housing Assistance Corporation (Rainbow); however, Equality is the actual owner of Haverstock Hills Apartments and Rainbow is an entity affiliated with Equality. Protests to the rates were signed by Equality and Haverstock Hills Apartments. For purposes of all prior pleadings please substitute Equality for Rainbow.

² *Mediator's Report on Mediation*, Aug. 4, 2014, Hunter Burkhalter, Administrative Law Judge/Mediator, SOAH.

(TCEQ) Staff Attorney, on July 30, 2014, filed a copy of the Settlement Agreement with SOAH and requested that the case be dismissed from SOAH's docket and remanded to the Executive Director (ED) of the TCEQ for processing (ED's Motion).³ We support the ED's Motion. Subsequently, Mark Zeppa, attorney for Douglas Utility Company (Douglas), filed a response opposing the ED's motion to dismiss the case from SOAH's docket. Mr. Zeppa essentially provided that Douglas no longer likes the terms of the Settlement Agreement that it executed and requests to withdraw its approval of the Settlement Agreement.

Request for Dismissal and Remand

The Settlement Agreement is an executed contract and this point is not contested. Mr. Zeppa in his motion provides: "Douglas participated in the mediation . . . and agreed to [the mediated] rates" Likewise, Mr. MacLeod, Mr. Burkhalter, and Mr. Karl Wolff, Fountainview Homeowners & Occupants Association (HOA)⁴ all have acknowledged that the case was settled and the Settlement Agreement was agreed to by all the parties to the case.

The TCEQ's rules provide that the Settlement Agreement is an enforceable contract. "Agreements of the participants reached as a result of [Alternative Dispute Resolution] ADR must be in writing, and are enforceable in the same manner as any other written contract."⁵ Similarly, SOAH's rules provide that an agreement signed by the parties and filed with SOAH is enforceable.⁶ Furthermore, § 154.071(a) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE provides: "If the parties reach a settlement and execute a written agreement disposing of the

³ *Motion to Dismiss and Remand*, July 30, 2014, Brian MacLeod, Staff Attorney, TCEQ.

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⁵ 30 TAC § 40.8.

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dispute, the agreement is enforceable in the same manner as any other written contract."⁷ Additionally, Rule 11 of the Texas Rules of Civil Procedure provides that a signed agreement that is filed with SOAH is an enforceable contract.⁸

The Settlement Agreement is binding as a contract and is enforceable and may not be repudiated by Douglas. As provided *In the Matter of the Marriage of Ames*: "a party who has reached a settlement agreement disposing of a dispute through alternative dispute resolution procedures may not unilaterally repudiate the agreement."⁹ Furthermore, the Settlement Agreement is not entitled to be revoked because of an alleged mistake on the part of Douglas. Mr. Zeppa wants to withdraw the settlement on the basis of a unilateral mistake by Douglas; however, a party to an arms-length transaction cannot set-aside the contract by alleging that he did not know what he was signing.¹⁰ "The role of the courts is not to protect parties from their own agreements, but to enforce contacts that parties enter into freely and voluntarily."¹¹ "Sophisticated parties, like all parties to a contract, have 'an obligation to protect themselves by reading what they sign.'"¹² A court is not allowed to change the allocation of risks among the parties, but only to enforce the allocation as specified in the agreement. *Id.*

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⁹ 800 S.W.2d 590, 592 (Tex. App.--Amarillo, 1993, no writ).

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A settlement agreement reached through mediation must be treated as a contract and the parties required to honor the agreement.¹³ If a party were allowed to withdraw from a mediation agreement, the entire mediation process would be for naught.¹⁴

Request for Relief

For the foregoing reasons, Equality Community Hosing Corporation respectfully requests that the Administrative Law Judge dismiss the case from SOAH's docket and remand the case to the TCEQ, where the ED can approve the rates and tariffs agreed to by the parties in accordance with the Settlement Agreement, and grant Equality Community Housing Corporation any other relief to which it may be entitled.

Respectfully submitted,

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By: 

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jwilson@mcginnislaw.com
Phil Haag (SBN 08657800)
phaag@mcginnislaw.com

ATTORNEYS FOR EQUALITY COMMUNITY
HOUSING CORPORATION

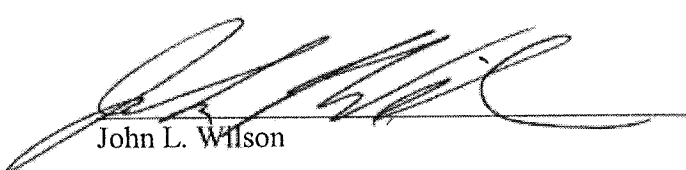
¹³ *Ames*, 800 S.W.2d at 592.

¹⁴ *Id.*

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 13th day of August, 2014.

Mark Zeppa 4833 Spicewood Springs Rd., #202 Austin, TX 78759 512 346-4011 attorney for Douglas Utility Company markzeppa@austin.rr.com mark@zeppalaw.com	Mail _____ Fax _____ E-mail <u> x </u>
Garrett Arthur TCEQ, Office of Public Interest Counsel MC-103 P.O. Box 13807 Austin, TX 78711-3087 512-239-5757 Garrett.arthur@tceq.texas.gov	Mail _____ Fax _____ E-mail <u> x </u>
Brian MacLeod TCEQ, MC - 173 P.O. Box 13807 Austin, TX 78711-3087 512-239-0750 Brian.macleod@tceq.texas.gov	Mail _____ Fax _____ E-mail <u> x </u>
Karl E. Wolf Fountainview Homeowners Association 5523 Mendota lane Houston, TX 77032 713-301-7149 kwolffsr@att.net	Mail _____ Fax _____ E-mail <u> x </u>


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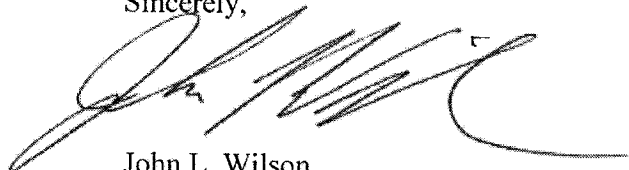
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By: 

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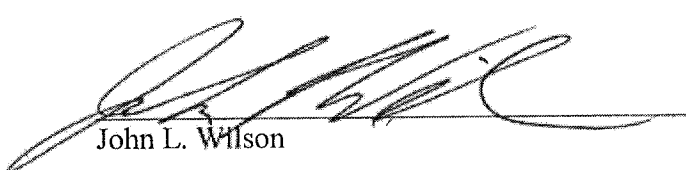
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