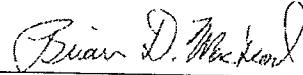


Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Richard A. Hyde, P.E., Executive Director

Robert Martinez, Director
Environmental Law Division



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ATTORNEYS FOR THE
EXECUTIVE DIRECTOR

Attachment H
Order No. 3
Regarding Motion to Dismiss and Remand and
Requesting Dates for a Prehearing Conference

**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 | § | OF |
| HARRIS COUNTY, TEXAS | § | ADMINISTRATIVE HEARINGS |

**ORDER NO. 3
REGARDING MOTION TO DISMISS AND REMAND AND
REQUESTING DATES FOR A PREHEARING CONFERENCE**

The above-referenced matter was referred to mediation on June 6, 2014, with all deadlines established in Order No. 1 abated until the conclusion of the mediation process. On July 30, 2014, the mediator assigned to mediate this case reported in writing that an agreement had been reached in mediation and that the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) would be filing a motion to remand this matter to the Commission. On July 30, 2014, the ED filed a Motion to Dismiss and Remand (Motion). On July 31, 2014, Douglas Utility Company (Applicant) filed a Response to the Motion, stating that the settlement agreement should not be entered and the case should be returned to the general docket.

Other parties in this case, Fountainview Homeowners Association (Fountainview) and Rainbow Housing Assistance Corporation, which is owned by Equality Community Housing Corporation (Equality), have filed separate motions supporting the Motion and the ED also filed a brief on August 13, 2014, in support of the Motion. In particular, Equality argues that TCEQ's rules, 30 Texas Administrative Code § 40.8 (applicable to TCEQ-conducted alternative dispute resolution proceedings) provide that an agreement reached in writing is enforceable as a contract. Fountainview asserts that costs were incurred to drive from Houston to Austin for the mediation in both time and money expended to participate in the mediation. The ED agrees with the other parties and further argues that Applicant admitted that there was a settlement and a written contract, but now seeks to anticipatorily breach the contract. The ED requests that the Administrative Law Judge (ALJ) dismiss and remand the case to the Commission.

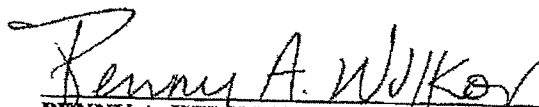
Having considered the parties arguments, the ALJ is reluctant to find that the request for remand meets the requirement of 30 Texas Administrative Code § 80.101, which states that a remand to the ED

is appropriate where “all parties to a contested case reach a settlement so that no fact or issues remain controverted.” The rule also states that after remand to the ED, the application should be considered uncontested. Here, that is not the case. Accordingly, the order of mediation referral in this action in Order No. 2 is hereby **WITHDRAWN**. The parties may request that this case be sent back to mediation status for a second mediated conference, if the parties believe that further negotiations would be beneficial to settling the case.

Otherwise, the Public Utility Commission (PUC) has enacted new procedural rules related to the migration of water utilities from TCEQ to the PUC. Pursuant to 16 Texas Administrative Code § 22.248 (d)(2), (effective September 1, 2014), the ALJ is required to convene a prehearing conference to address whether 30 Texas Administrative Code Chapter 80 or PUC rules should govern discovery; to assess whether the procedural schedule should be modified or abated to allow PUC staff preparation time; to discuss the PUC filing requirements; and to reconcile any other matter that may arise as a result of the transfer. The parties may also consider the provisions of 16 Texas Administrative Code § 22.127(b)(3), which permits the parties to certify a question to the Public Utility Commissioners concerning whether commission policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

By Friday, September 19, 2014, the parties are requested to supply three agreed dates for a prehearing conference, falling in different weeks. The ALJ will then issue an order setting the date, time, and issues to be addressed at the prehearing conference. If a party does not wish to participate, then that party must contact the ALJ’s assistant, Angela Pardo, at (512) 463-9726, or Angela.Pardo@soah.state.tx.us by September 19, 2014.

SIGNED August 20, 2014.



PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS