



Control Number: 42860



Item Number: 33

Addendum StartPage: 0

PUC DOCKET NO. 42860
 SOAH DOCKET NO. 473-14-5140 (CURRENT)
 SOAH DOCKET NO. 582-14-1052 (PRIOR)

RECEIVED

2014 SEP -8 PM 2: 15
 PUBLIC UTILITY COMMISSION
 FILING CLERK

APPLICATION OF DOUGLAS UTILITY COMPANY, TO CHANGE ITS WATER AND SEWER RATES IN HARRIS COUTNY TEXAS, CCN NOS. 11369 & 20527	§ § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
---	--------------------------------------	--

COMMISSION STAFF’S RESPONSE TO EQUALITY COMMUNITY HOUSING CORPORATION’S APPEAL OF ORDER NO. 3

COMES NOW, Staff (Staff) of the Public Utility Commission of Texas (PUC) and files this Response to Equality Community Housing Corporation’s Appeal of an Interim Order of the Administrative Law Judge in the Application of Douglas Utility Company to Change Water and Sewer Rate/Tariff Matter.

The Administrative Law Judge’s (ALJ) Order No. 3 declined to dismiss and remand the referenced case because the applicant Douglas Utility—after signing a settlement agreement reached by all parties following nine hours of mediation—decided two days later that it would not honor the agreement. While this matter originated under the jurisdiction of the Texas Commission on Environmental Quality, as of September 1, 2014, it has been transferred to the PUC. Staff believes that allowing the applicant to unilaterally withdraw from a signed settlement agreement will undermine the integrity of, and confidence in, the mediation process and render it potentially meaningless. Staff requests that the Commission grant Equality Community Housing Corporation’s (Equality) appeal of Order Number 3.

I. Background

On July 29, 2014, the parties participated in mediation at the State Office of Administrative Hearings (SOAH). During this mediation, the parties reached an agreement which they memorialized in a signed settlement agreement. Accordingly, the Executive Director of the TCEQ filed a Motion to Dismiss and Remand the matter to the TCEQ as uncontested. On

July 31, 2014, Douglas Utility Company filed a document stating that even though it had signed a mediated settlement agreement, the utility, after further reflection, found it could not meet operating expenses under the settlement agreement and that it could not file a new application in order to cover the shortage. Therefore, the utility stated that it was withdrawing its consent. On August 20, 2014, SOAH Order No. 3 held that this case cannot be remanded to the TCEQ ED for processing because the case is no longer uncontested.

II. Discussion

The Texas Government Code states: “Alternative dispute resolution procedures developed and used by a governmental body must be consistent with Chapter 154, Civil Practice and Remedies Code.”¹ Chapter 154 of the Civil Practice and Remedies Code states: “If the parties reach a settlement and execute a written agreement disposing the dispute, the agreement is enforceable in the same manner as any other written contract.”² A signed settlement agreement after mediation becomes binding at the moment it is signed and cannot be unilaterally repudiated.

The case becomes uncontested at that point; thus the Commission is then authorized to sign the order based on the binding agreement, which serves as evidence that the case is uncontested and the result agreed to. To rule otherwise changes mediation from a method to create judicial efficiency to a tool that can be used to elongate trials and waste resources. The policy effect of ruling that a case cannot be remanded if a party withdraws from a signed mediation settlement would be negative and potentially devastating to the mediation process. It will create a disincentive for parties to enter mediation for fear a party to a signed agreement could singularly repudiate that agreement and negate the entire process.

III. Prayer

Staff is in agreement with Equality and respectfully requests that the Public Utility Commission grant Equality’s appeal and determine that the Settlement Agreement is valid and binding and order that the ALJ revoke Order No. 3, dismiss the case from SOAH, and remand it to the PUC.

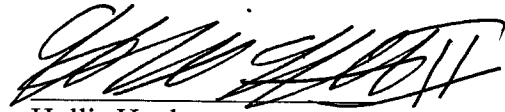
¹ Tex. Gov’t Code § 2009.051(a).

² Tex. Civ. Prac & Rem. Code § 154.071(a).

Respectfully Submitted,

Joseph P. Younger
Division Director
Legal Division

Karen S. Hubbard
Managing Attorney
Legal Division



Hollis Henley
Attorney-Legal Division
State Bar No. 24066672
(512) 936-7230
(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on September 8, 2014 in accordance with P.U.C. Procedural Rule 22.74.



Hollis Henley