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SOAH DOCKET NO. 473-14-5140.WS

PUC DOCKET NO. 42860

2015 JAN 22 AM 10:02

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

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

**SOAH ORDER NO. 9
MEMORIALIZING PREHEARING CONFERENCE AND
PROVIDING NOTICE OF HEARING ON THE MERITS**

On January 13, 2015, Administrative Law Judges (ALJs) Penny A. Wilkov and William G. Newchurch convened a prehearing conference with the following parties participating: Douglas Utility Company (Applicant), appearing through attorney Mark H. Zeppa; Staff (Staff) of the Public Utility Commission of Texas (PUC or Commission), appearing through attorney Hollis Henley; Equality Community Housing Corporation (Equality), appearing through attorney Philip S. Haag;¹ and Fountainview Homeowners Association (Fountainview), appearing through representative Karl E. Wolff. This Order establishes the procedural schedule in this case and notes the ALJs' rulings that were made at the prehearing conference.

I. PROCEDURAL HISTORY

By way of background, 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 August 4, 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, Applicant filed a Response to the Motion, opposing the dismissal and stating:

Douglas participated in the mediation . . . and agreed to rates that, from the resources Douglas had available to it in Austin, led Douglas's President Carol Zieben to believe

¹ The ALJs note that Mr. Haag appeared at the initial prehearing conference and was listed as one of the attorneys representing Equality, along with John L. Wilson. Mr. Wilson has since retired, and Mr. Haag is now designated as the lead attorney in the case.

would maintain Douglas' [sic] financial integrity until Douglas could file another rate case. Upon returning to Houston, Mrs. Zieben had the settlement rates run through her computer billing program. She determined that that the settlement rates would put Douglas into a negative cash flow situation. Douglas cannot provide continuous and adequate water or sewer service if it cannot pay its bills.

On August 20, 2014, in State Office of Administrative Hearings (SOAH) Order No 3, the ALJ denied the TCEQ ED's motion to dismiss and remand. On September 1, 2014, jurisdiction over this matter transferred from the TCEQ to the PUC. On September 2, 2014, Equality filed a motion for reconsideration and, in the alternative, a request for summary decision or certification of an issue to the Commission. On the same day Equality filed an appeal of SOAH Order No. 3.

On October 29, 2014, the PUC issued an "Order on Appeal of SOAH Order No. 3," which denied the appeal filed by Equality and concluded that a limited evidentiary hearing was necessary to determine whether or not the settlement rates in this proceeding violated section 13.183(a) of the Texas Water Code. Following the limited evidentiary hearing, the Commission will determine whether to adopt the settlement agreement as it exists or remand the proceeding to SOAH for a full hearing to establish legal rates for Applicant. The Commission also concluded that Applicant has the burden of proof to demonstrate that the settlement agreement rates violate Texas Water Code § 13.183(a). The parties agreed at the prehearing conference that the Commission Order provides adequate notice of the scope of the hearing.

II. CLARIFYING PROCEDURAL RULES

According to the parties, discovery has commenced in this case within the parameters of the TCEQ Procedural Rules, which provides that "[d]iscovery shall be conducted according to the Texas Rules of Civil Procedure, unless [TCEQ] rules provide or the judge orders otherwise."²

The PUC has adopted P.U.C. Proc. R. § 22.248(d)(2), effective August 4, 2014, which gives the ALJs discretion to determine whether TCEQ procedural rules (30 Texas Administrative Code (TAC)

² 30 Texas Administrative Code § 80.151(a).

Chapter 80) or PUC procedural rules (16 TAC Chapter 22) will govern discovery in a proceeding where a scheduling order has been issued but a hearing has not yet occurred. At the prehearing conference, all parties agreed that the PUC rules should govern discovery in this proceeding. Therefore, the ALJs will henceforth apply the PUC's discovery rules in the case.

III. ADOPTION OF PROCEDURAL SCHEDULE

At the prehearing conference, the parties conferred and agreed on the following schedule for prehearing activities and the hearing on the merits. The agreed schedule shall govern this proceeding, which is hereby adopted by the ALJs.

DATE	ACTIVITY
February 23, 2015	Applicant's supplemental direct evidence due. (The Applicant prefiled direct evidence on May 22, 2014, which will become part of the record).
April 1, 2015	Equality's direct evidence due.
April 1, 2015	Fountainview's statement of position and/or direct evidence due.
May 18, 2015	PUC Staff's direct evidence due.
June 1, 2015	Applicant's rebuttal evidence due.
June 8, 2015	Objections to direct/rebuttal evidence.
June 15, 2015	Replies to objections to direct/rebuttal evidence.
June 17, 2015	Prehearing Conference, if requested by proper motion or order by ALJs.
June 23-25, 2015	Hearing on the Merits

All dates for document filings are dates for the actual delivery. Delivery may be by facsimile or email if agreed to by the parties. The parties may agree in writing to modify the dates in the procedural schedule, with the exception of the dates for the prehearing conference and hearing on the merits, which may only be changed by order of the ALJs.

IV. NOTICE OF HEARINGS

A. Notice of Final Prehearing

Notice is hereby given that a prehearing telephone conference will be held in this case at **10:00 a.m. on June 17, 2015, if necessary and upon proper motion**, to address any pending motions or objections to prefiled evidence. If there are no pending prehearing motions or objections, the prehearing telephone conference is cancelled.

Party representatives will be contacted at the telephone numbers listed on the attached service list. Any party wishing to be called at a different telephone number must contact the Judges' assistant, Angela Pardo, at (512) 463-9726 not less than 24 hours before the prehearing conference. If a party does not answer the telephone at the designated time, the prehearing conference will proceed without that party's participation.

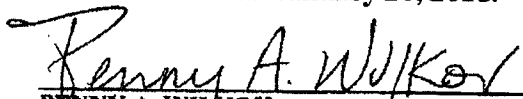
B. Notice of Hearing on the Merits

Notice is hereby given that the **hearing on the merits** will be held in this case as follows:

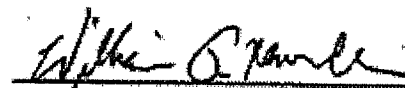
9:00 a.m. June 23-25, 2015
State Office of Administrative Hearings
300 W. 15th Street, 4th Floor
Austin, Texas 78701

If a party has a procedural question, the party may contact Angela Pardo at (512) 463-9726 or angela.pardo@soah.state.tx.us.

SIGNED January 20, 2015.



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



WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
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SERVICE LIST

AGENCY: **Public Utility Commission of Texas (PUC)**
STYLE/CASE: **DOUGLAS UTILITY COMPANY**
SOAH DOCKET NUMBER: **473-14-5140.WS**
REFERRING AGENCY CASE:

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE
ALJ PENNY WILKOV

REPRESENTATIVE / ADDRESS

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