

Control Number: 42860



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SOAH DOCKET NO. 473-14-5140
DOCKET NO. 42860

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

2015 JUL 22 AM 10:32
PUBLIC UTILITY COMMISSION
OF TEXAS
FILING CLERK

COMMISSION STAFF'S STATUS UPDATE & REQUEST FOR INTERIM RATES

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this status update and response to DUC's response to Order No. 12 and would show the following:

I. BACKGROUND

On March 12, 2013, Douglas Utility Company (DUC) filed with the Texas Commission of Environmental Quality (TCEQ) a notice of intent to change rates for water and sewer service. DUC's proposed rates went into effect on May 12, 2013. On July 29, 2014, DUC, the executive director of the TCEQ, the Office of Public Interest Counsel, the Fountainview Homeowners Association (Fountainview), and Equality Community Housing Corporation (Equality) participated in mediation at the State Office of Administrative Hearings (SOAH) and agreed on new water and sewer service rates. On July 31, 2014, DUC asserted that it was withdrawing from the settlement because, after signing the agreement, DUC determined that the agreed rates would result in a negative cash flow. DUC also asserted that it could not provide continuous and adequate service if it cannot pay its bills.

On September 1, 2014, jurisdiction over this proceeding transferred by statute from the TCEQ to this Commission. On October 29, 2014, the Commission concluded that a limited evidentiary hearing was necessary to determine whether or not the settlement rates in this proceeding violate section 13.183(a) of the Texas Water Code (TWC).¹ If the Commission concludes that the settlement rates violate that section, this matter would then have to proceed to a hearing to establish legal rates for DUC. If the Commission concludes otherwise, it may set rates based upon the settlement agreement of the parties.² On June 24, 2015, SOAH Order No. 11 was issued, granting a continuance and requiring a status report by September 1, 2015. On

¹ Order on Appeal of Order No. 3 (Oct. 29, 2014)

July 6, 2015, SOAH Order No. 12 was issued, requesting parties to supply agreed dates for a prehearing conference. Therefore, this status update is timely filed.

II. STATUS UPDATE AND RESPONSE TO DUC'S RESPONSE TO ORDER NO. 12

Staff is opposed to DUC's request for an indefinite abatement or abatement of the proposed prehearing conference. All parties to this proceeding, including DUC, entered into a settlement agreement resolving the rates to be charged as a result of this case almost one year ago. However, customers have been paying DUC's original proposed rates for over two years. Staff is sympathetic to Mr. Zeppa's condition and has been agreeable to several extensions, but Staff cannot continue to put the business of the Commission on hold while customers are paying rates that, in Staff's opinion, are unreasonable.

On June 19, 2015, prior to the Administrative Law Judge's (ALJ) issuance of SOAH Order No. 11, Staff sent Mr. Zeppa a letter discussing possible solutions to processing this docket. In that letter, Staff objected to Mr. Zeppa's request for an indefinite abatement and requested that Mr. Zeppa provide a copy of the letter to his client, DUC, so that they may make an informed decision to resolve the issues in this docket. Staff has not heard from Mr. Zeppa or DUC at this time.

In DUC's recent filing, DUC claims that holding a prehearing conference within one month would prejudice DUC as there would be no time to engage another attorney to assist or to sufficiently provide the background to this case. However, DUC has been on notice for several months of Staff's position and has had ample opportunity to retain additional counsel.

Unfortunately, since this docket has been pending for over two years and the ratepayers continue to pay DUC's proposed rates, Staff believes it is important to proceed and reach an ultimate conclusion of this docket. The currently charged rates result in annual revenues approximately \$84,000 higher than the settlement rates would generate. If spread ratably over the approximate 200 customers of DUC, the result is potential over-billings of \$400 annually or \$34 per month per customer.

If a hearing is postponed to September and a final order of the Commission issued in November of this year, the proposed rates will have been in effect for two and a half years, or thirty months. If the settlement rates were approved as of the original effective date of rates, the

² *Id.* at 5.

total over collection would be approximately \$210,000, almost half of the settled revenue requirement. Spread ratably over the 200 customers, customers would be entitled to an average refund of approximately \$1,050.00. Continuing this case with the status quo could prejudice ratepayers if the final rate authorized is less than DUC's proposed rate. Equality, in their motion for reconsideration of continuance, states that if the final decision in this case results in rates at or near what Equality contends is appropriate, a serious question may arise as to DUC's ability to refund Equality for the rates paid during the past two years.

Given that a prehearing conference is currently contemplated, Staff is giving additional notice that Staff is opposed to continued abatement. Moreover, Staff requests interim rates be set at the settlement rates in the event that the case is not scheduled for trial by the end of September 2015. Pursuant to 16 Tex. Admin. Code § 29.29(b) (TAC), Staff may request interim rates at any time after the filing of a statement of intent to change rates. DUC filed its application to change rates on March 12, 2013 with the TCEQ. Interim rates may be established by the Commission in cases under the Commission's original or appellate jurisdiction where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the utility.

Staff is considerate of Mr. Zeppa's condition and has been agreeable to several extensions; however, this docket has been pending at SOAH for over a year and a half and the ratepayers continue to pay DUC's proposed rates, which, in Staff's opinion, are unreasonable. Further, the uncertain status of this docket places an unreasonable economic hardship on DUC's customers as well as on DUC's ability to refund customers. Finally, Mr. Zeppa has been on notice of Staff's ongoing objections to abatement and further postponement of this docket and did not seek additional counsel at an earlier opportunity. Staff is still unaware if Mr. Zeppa provided his client with Staff's letter, dated June 19, 2015, discussing possible resolutions to this docket. Therefore, in the interest of all parties in reaching a final resolution in this matter, Staff urges the ALJ to continue processing this docket. In the event that continued processing of the docket is unworkable, Staff requests interim rates be set at settlement rates until a final decision is reached in this docket.

III. CONCLUSION

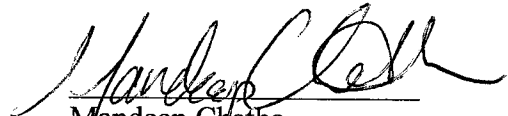
Staff requests entry of an order consistent with the above recommendations.

Dated: July 22, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Stephen Mack
Managing Attorney
Legal Division

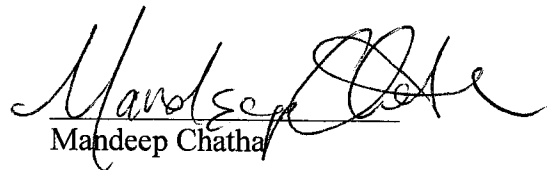


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this July 22, 2015 in accordance with 16 TAC § 22.74.



Mandeep Chatha