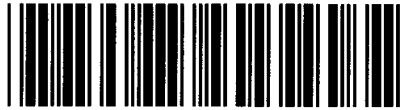


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APPLICATION OF DOUGLAS
UTILITY COMPANY TO CHANGE
WATER AND SEWER RATE/TARIFF
IN HARRIS COUNTY, TEXAS

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PUBLIC UTILITY COMMISSION
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OF TEXAS

**COMMISSION STAFF'S RESPONSE TO DOUGLAS UTILITY COMPANY'S NOTICE
OF WITHDRAWAL OF APPLICATION FOR RATE/TARIFF CHANGE AND
PROPOSED DISPOSITION OF INCREMENTAL REVENUES**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this response to Douglas Utility Company's (DUC) notice of withdrawal of application for rate/tariff change and proposed disposition of incremental revenues.

I. INTRODUCTION

On March 12, 2013, DUC filed with the Texas Commission on 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

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

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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 July 22, 2015, Staff filed a request for interim rates pursuant to 16 Tex. Admin. Code § 24.29(b) (TAC). On July 28, 2015, SOAH Order No. 12 was issued, setting September 1, 2015 as the date for the pre-hearing conference. At the pre-hearing conference on September 1, 2015, DUC stated its intention to withdraw its rate application. DUC subsequently filed its written notice to withdraw on September 2, 2015. Therefore, this Response is timely filed.

II. PROPER DISMISSAL PROCEDURE

Pursuant to 16 TAC § 22.181(b), a party that initiated a proceeding may withdraw its application, without prejudice to refile of the same, at any time before that party has presented its direct case. After the presentation of its direct case, but prior to the signing of a final order thereon by the Commission, a party may withdraw its application, without prejudice to refile of same, only upon a finding of good cause by the presiding officer.³ If an application is authorized to be withdrawn, the presiding officer shall issue an order of dismissal without prejudice.⁴

On March 12, 2013, DUC filed its notice of intent to change rates for water and sewer service. Since that time, DUC's application has been pending at various stages at SOAH.

Staff is unopposed to DUC's request to withdraw its application, provided that refunds to all customers are appropriately calculated and approved by the Commission before DUC's application is dismissed.

III. AUTHORITY TO ORDER REFUNDS

The Commission has authority to require refunds under 16 TAC § 24.29(c), which provides as follows: "At any time during a proceeding, the Commission may, for good cause, require a utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or interim rate." Additionally, 16 TAC § 24.29(h) provides that unless "otherwise agreed to by the

² *Id.* at 5.

³ 16 TAC § 22.181(b).

⁴ *Id.*

parties in a rate proceeding, the retail public utility shall refund or credit against future bills all sums collected in excess of the final rate ordered plus interest....”

In DUC’s request to withdraw,⁵ DUC agrees to “change the rates being charged back to historic rates.”⁶ Historic rates are the rates that were in effect prior to the rate case being filed or the last state-approved rates.⁷ DUC has been charging proposed rates since May 12, 2013. DUC further agrees to provide Commission Staff with a per customer account reconciliation of the difference between revenues paid under the proposed rates and the revenues that should have been paid under the historic rates.⁸ Any customer who paid more during the pendency of the withdrawn rate change application than they would have paid under the historic rates will be entitled to a refund of the incremental revenue collected. Likewise, any customer who paid less than they would have paid under the historic rates will be required to pay the incremental difference as a surcharge.

In addition to refunding customers revenues paid under the proposed rates, DUC agrees to a per-account reconciliation of the over-billing of the fees charged by the City of Houston under its Groundwater Reduction Plan (GRP). Finally, DUC agrees that all authorized refunds should also include interest.

Since the exact amount of the refund is not ascertainable at this time, Staff recommends that the ALJ issue an order directing DUC to calculate and fully account for all sums *charged* pursuant to the application, including the difference between *charges made* under the proposed rates and the *charges* that should have been made under the historic rates.⁹ DUC should also calculate the over-billing of the fees for the GRP. All over or under billings should accrue interest monthly at the Commission approved interest rate.

Staff recommends that the appropriate interest rate to be applied to any balances is the Commission approved interest rate in effect for each year in which there is a balance. For example, the balance outstanding for 2013 should accrue compound interest monthly at 1/12th of Commission-approved interest rate for overbilling for 2013. The 2013 Commission-approved

⁵ Notice of withdrawal of application for rate/tariff change and proposed disposition of incremental revenues (Sept. 2, 2015).

⁶ *Id* at 2.

⁷ *Id* at 1.

⁸ *Id* at 1.

V. Proposed Procedural Schedule

Staff has discussed the following procedural schedule with DUC, Equality, and Fountainview and can represent there is no opposition.

Event	Date
Deadline for DUC to file a per account reconciliation of all over-billings	September 30, 2015
Deadline for Staff recommendation on the refund information filed by DUC and for Staff to propose an additional procedural schedule for this proceeding, if necessary	October 14, 2015
Deadline for DUC and other parties to file a response to Staff's recommendation	October 21, 2015
Deadline for Staff to file its final recommendation	November 6, 2015

VI. CONCLUSION

Staff recommends that the ALJ issue an order directing DUC to calculate and fully account for all sums charged pursuant to the application, including the difference between charges made under the proposed rates and the charges that should have been made under the historic rates. DUC should also account for the over-billing of the fees for the GRP. All balances should accrue compound interest monthly at the Commission approved interest rate for overbilling. Staff also requests the proposed procedural schedule be adopted.

Dated: September 10, 2015

Respectfully Submitted,

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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 September 10, 2015 in accordance with 16 TAC § 22.74.

Mandeep Chatha w/permission
Mandeep Chatha
Stephen Mack

interest rate for overbilling is 0.21%.¹⁰ The 2014 Commission-approved interest rate for overbilling is 0.15%.¹¹ The 2015 Commission-approved interest rate for overbilling is 0.12%.¹² The 2016 Commission-approved interest rate for overbilling will be set in December of 2015.

After Staff's approval of DUC's calculations of the refunds and surcharges, Staff recommends DUC's application be dismissed. Staff agrees that refunds should be made per customer account.

IV. TIMEFRAME OF REFUNDS

DUC proposes to refund rates in the same number of months that the proposed rates were collected, effective when the Commission issues an order in this case. DUC alleges that traditionally refunds and/or surcharges should be distributed or made over the same number of months the proposed rates were collected; however, DUC is willing to make all refunds and surcharges in twenty-four months.¹³ Staff recommends that refunds be made over a 6 month period beginning with the first month following the final Commission order requiring refunds.

⁹ Staff notes that Staff's recommendation differs slightly from DUC's request in that it refers to "charges made" as opposed to "revenues paid." The purpose of the reconciliation is to correct the customer accounts for the difference in rates and is not intended to account for any other billing, payment, or collection issues.

¹⁰ Setting Interest Rates for Calendar Year 2013, Project No. 40019, Order (Dec. 5, 2012).

¹¹ Setting Interest Rates for Calendar Year 2014, Project No. 41094, Order (Dec. 3, 2013).

¹² Setting Interest Rates for Calendar Year 2015, Project No. 42079, Order (Dec. 4, 2014).

¹³ Notice at 2.