

Control Number: 42864



Item Number: 8

Addendum StartPage: 0







SOAH DOCKET NO. 582-14-3880  
TCEQ DOCKET NO. 2014-0631-UCR

42864

IN RE: APPLICATION BY  
ENCHANTED HARBOR  
UTILITY FOR WATER RATE/  
TARIFF CHANGES  
APPLICATION NO. 37728-R

§  
§  
§  
§  
§

BEFORE THE STATE OFFICE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Public Utility Commission  
Filing Clerk

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**MOTION TO REMAND**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Farmers Transport Inc. dba Enchanted Harbor Utility, Applicant in the above-captioned docket and files this its Motion to Remand and would show the following:

I.

The parties have reached a full settlement in this case. Attached is a copy of the Mediated Settlement Agreement signed by all parties. All Protestants have withdrawn their hearing requests as set forth in the attached.

II.

Because all issues have been resolved by the attached Mediated Settlement Agreement, and Protestants have withdrawn their hearing requests, Farmers Transport Inc. dba Enchanted Harbor Utility hereby requests that the ALJ remand this case to the Executive Director of the TCEQ for administrative processing as an uncontested case and so that a final order can be issued.

Respectfully submitted,

WILLATT & FLICKINGER  
Attorneys at Law  
2001 North Lamar  
Austin, Texas 78705  
Telephone: (512) 476-6604  
Telecopier: (512) 469-9148

By: \_\_\_\_\_

Bill Flickinger  
State Bar No. 07149050

ATTORNEY FOR FARMERS TRANSPORT INC.  
dba ENCHANTED HARBOR UTILITY



### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion to Remand has been sent via First Class Mail and/or Facsimile on this 26<sup>th</sup> day of August, 2014, to the following:

#### **Administrative Law Judge:**

Honorable Rebecca Smith  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78701  
Ph: (512) 475-4993  
Fx: (512) 322-2061

(Via Fax)

#### **Representing the TCEQ Executive Director:**

Mr. Doug Brown, Attorney  
Texas Commission on Environmental Quality  
Office of the Executive Director, MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Ph: (512) 239-2253  
Fx: (512) 239-3434

(Via Fax)

#### **Representing the TCEQ Public Interest Counsel:**

Mr. Blas Coy, Jr.  
Texas Commission on Environmental Quality  
Office of Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087  
Ph: (512) 239-6363  
Fx: (512) 239-6377

(Via Fax)

#### **Representing the Protestants:**

Mr. Keith L. Smith  
750 Bradshaw  
Corpus Christi, Texas 78412

(Via U.S. Mail)



Ms. Evelyn Saucier  
4404 Balcones Woods Drive  
Austin, Texas 78759

Ms. Anne Clark  
1212 W. Live Oak Street  
Lockhart, Texas 78644

Ms. Bridget C. Bohoc, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC 105  
Building F, Room 1101  
12100 Park 35 Circle  
Austin, Texas 78753

(Via E-file)

By: 

Bill Flickinger



**TCEQ DOCKET NO. 2014-0631-UCR  
SOAH DOCKET NO. 582-14-3880**

<b>IN RE: APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>ENCHANTED HARBOR</b>	<b>§</b>	
<b>UTILITY FOR WATER RATE /</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>TARRIFF CHANGES</b>	<b>§</b>	
<b>APPLICATION NO. 37728-R</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**MEDIATED SETTLEMENT AGREEMENT**

To avoid litigating the application by the Farmers Transport Inc. dba Enchanted Harbor Utility ("Applicant") for water rate / tariff changes before the Texas Commission on Environmental Quality ("TCEQ" or "Commission") in a contested case hearing, Applicant, the Executive Director ("ED"), and the following ratepayers (collectively "Protestants"): Keith L. Smith, Anne Clark and Evelyn Saucier, mediated their dispute and agree to the following:

**A. Applicant agrees to:**

**1) Seek final approval of the following water rates and tariff charges:**

Base rate = \$59.00, which includes 3000 gallons  
Volume charge (over 3000 gallons) = \$6/1000 gallons  
tap fee reduced to \$200.  
reconnect fee reduced to \$375.

**2) Seek final approval of a surcharge amount reduced to \$42.78, with received amounts to be escrowed with and supervised by the TCEQ. Applicant agrees that these proceeds may be used only for the capital improvement projects listed on the following chart. Any amounts collected which exceed what is necessary to complete these projects shall be refunded to customers.**



TEN DESCRIPTION	QTY	UNIT PRICE	EXTENSION	BID OR DEPRECIATION	
				ESTIMATE	YEARS
1 4" C-900 DR-18 PVC WATER MAIN	5900	\$ 3.00	\$ 17,700.00	BID	50
2 4" TAPS	100	\$ 30.00	\$ 3,000.00	USA BB	50
3 CURB STOPS	100	\$ 25.00	\$ 2,500.00	USA BB	50
4 METER CUTOFF VALVES	100	\$ 25.00	\$ 2,500.00	USA BB	20
5 METER BOXES	100	\$ 25.00	\$ 2,500.00	USA BB	50
6 3/4 LINE 30" AVERAGE	3000	\$ 0.50	\$ 1,500.00	G&W	50
7 4" MI GATE VALVE	20	\$ 200.00	\$ 4,000.00	G&W	50
8 BLOW OFF ASSEMBLY	1	\$ 450.00	\$ 450.00	G&W	50
12 NEW 10HP WELL PUMP & CONTROLS	1	\$ 8,500.00	\$ 8,500.00	Crintendon	10
13 MOTOR CONTROL AND STORAGE BUILDING	1	\$ 25,000.00	\$ 25,000.00	EST	15
14 NEW 20,000 GAL GROUND STORAGE	1	\$ 19,040.00	\$ 19,040.00	DIAMOND	50
15 NEW 5,000 GAL PRESSURE STORAGE	1	\$ 18,551.00	\$ 18,551.00	USA BB	50
		ASSETS	\$ 105,241.00		Annual Dep. \$ 4,026.49
LABOR					
16 MOVE EXISTING GROUND STORAGE	1	\$ 1,500.00	\$ 1,500.00	EST	
17 BORING ENTIRE LENGTH MI AVE.	5900	\$ 16.00	\$ 94,400.00	SRG	
18 CROSSEVER BORING	50	\$ 600.00	\$ 30,000.00	SRG	
19 JW CONSULTING FEE & BACKHOE RENTAL	1	\$ 25,000.00	\$ 25,000.00	BID	
20 LABOR TO INSTALL 4" VALVES	23	\$ 500.00	\$ 11,500.00	BID	
21 LABOR TO INSTALL 4" TAPS	96	\$ 500.00	\$ 48,000.00	BID	
22 CONNECTIONS TO MAIN	5	\$ 1,200.00	\$ 6,000.00	G&W	
23 LEGAL FEES	1	\$ 10,000.00	\$ 10,000.00	G&W	
		LABOR	\$ 226,400.00		
		TOTAL COST	\$ 331,641.00		
24 TCEQ recommended contingency	10%	\$ 33,164.10	TCEQ		
25 ENGINEERING @ 10%	10%	\$ 33,164.10	G&W		
	TOTAL	\$ 397,969.20			
G&W BID FOR MUD (WATER PORTION)		\$ 739,767.00	\$580,800 + \$84,216 at 14.5% + \$67,251 contingency		
SAVINGS		\$ (341,797.80)	86%		

3. Contingent upon Applicant securing 3rd party financing at a rate equal to or lower than 10% per annum, Applicant agrees to a December 31, 2016 deadline for completion of capital improvement projects funded by above-referenced surcharge, and if Applicant fails to meet that deadline, surcharge collection must cease. However, should Applicant be unable to secure 3rd party financing at a rate equal to or lower than 10% per annum, Applicant agrees that collected surcharges would be spent on the capital improvement projects as accrued, and there would be no deadline for completion of the improvements.
4. The Executive Director has agreed to review how Enchanted Harbor Utility has allocated the surcharge amounts it has collected in 2014, and provide an opinion as to whether those collected amounts have been properly directed toward funding the specific list of capital improvement projects listed in Enchanted Harbor Utility's Application. Should the Executive Director determine that surcharge collections have exceeded that which has been properly spent on said capital improvements, the dollar amount of that differential shall be deposited by Enchanted Harbor Utility into its soon-to-be-created escrow account, as an initial principal deposit.



B. The Applicant and the Protestants agree to:

1. No refunds to customers (of difference between current rates and those which this Settlement establishes).
2. No rate expense reimbursement.
3. No restriction on Applicant's ability to file future rate applications.
4. The customers reserve the right to protest and review any such future rate increases as provided by law.
5. Parties agree that usage beginning after August 1, 2014 shall be subject to these settlement rates.

C. In consideration of the provisions listed above and actions to be taken by Applicant, Protestants hereby agree to withdraw their protests, hearing requests, and hearing party status requests previously filed and sought on this matter, and have no objection to a remand request of this matter from State Office of Administrative Hearings ("SOAH"). [The signed withdrawal is attached to this agreement and labeled "Attachment A"].

D. This Agreement is a legal contract between Applicant and Protestants, is enforceable by either party against the other in a court of competent jurisdiction, and is effective as of the date the last party executes this Agreement.

E. The ED participated in the mediation but is not a party to this Agreement. The ED has signed this Agreement only as witnesses to the Agreement. The ED acknowledges the review commitment in A.4.

\_\_\_\_\_  
Applicant Representative

\_\_\_\_\_  
[print name]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Keith L. Smith, Protestant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Anne Clark, Protestant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Evelyn Saucier, Protestant

\_\_\_\_\_  
Date

\_\_\_\_\_  
For the Executive Director

\_\_\_\_\_  
[print name]

\_\_\_\_\_  
Date



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E. The ED participated in the mediation but is not a party to this Agreement. The ED has signed this Agreement only as witnesses to the Agreement. The ED acknowledges the review commitment in A.4.

  
Applicant Representative  
President, Farmers Transport Inc.

Jesse Wood  
[print name]

8-24-14  
Date

Keith L. Smith, Protestant

Date

Anne Clark, Protestant

Date

Evolyn Saucier, Protestant

Date

For the Executive Director

[print name]

Date



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Applicant Representative

[print name]

Date



8/22/2014

Keith L. Smith, Protestant

Date

Anne Clark, Protestant

Date

Evelyn Saucier, Protestant

Date

For the Executive Director

[print name]

Date



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\_\_\_\_\_  
Applicant Representative

\_\_\_\_\_  
[print name]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Keith L. Smith, Protestant

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Anne Clark, Protestant

8/22/14  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Evelyn Saucier, Protestant

\_\_\_\_\_  
Date

\_\_\_\_\_  
For the Executive Director

\_\_\_\_\_  
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\_\_\_\_\_  
Applicant Representative

\_\_\_\_\_  
[print name]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Keith L. Smith, Protestant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Anne Clark, Protestant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Evelyn Saucier, Protestant

\_\_\_\_\_  
Date

8/22/2014

\_\_\_\_\_  
For the Executive Director

\_\_\_\_\_  
[print name]

\_\_\_\_\_  
Date



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\_\_\_\_\_  
Applicant Representative [print name] Date

\_\_\_\_\_  
Keith L. Smith, Protestant Date

\_\_\_\_\_  
Anne Clark, Protestant Date

\_\_\_\_\_  
Bvelyn Saucier, Protestant Date

 For the Executive Director  
 [print name] Date



Ms. Bridget Bohac  
Office of the Chief Clerk, MC-105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

Hon. Rebecca Smith  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street, Suite 502  
Austin TX 78701

Re: Application by Farmers Transport Inc. dba Enchanted Harbor Utility for water  
rate / tariff changes; TCEQ Docket No.2014-0631-UCR; SOAH Docket No. 582-  
14-3880

Ms. Bohac and Hon. Smith,

We hereby withdraw our hearing requests, and hearing party status requests filed on the  
above-referenced permit application, and no longer wish to protest this application.

Sincerely,

  
\_\_\_\_\_  
Keith L. Smith, Protestant

8/22/2014  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Anne Clark, Protestant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Evelyn Saucier, Protestant

\_\_\_\_\_  
Date



Ms. Bridget Bohac  
Office of the Chief Clerk, MC-105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

Hon. Rebecca Smith  
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300 West 15<sup>th</sup> Street, Suite 502  
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Re: Application by Farmers Transport Inc. dba Enchanted Harbor Utility for water  
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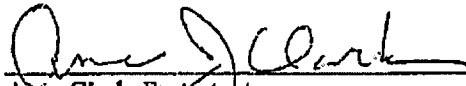
Ms. Bohac and Hon. Smith,

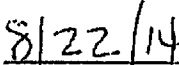
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Sincerely,

\_\_\_\_\_  
Keith L. Smith, Protestant

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Anne Clark, Protestant

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Evelyn Saucier, Protestant

\_\_\_\_\_  
Date

Attachment A



Ms. Bridget Bohac  
Office of the Chief Clerk, MC-105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

Hon. Rebecca Smith  
State Office of Administrative Hearings  
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Date

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\_\_\_\_\_  
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\_\_\_\_\_  
Evelyn Sancier, Protestant

8/22/2014  
\_\_\_\_\_  
Date

Attachment A