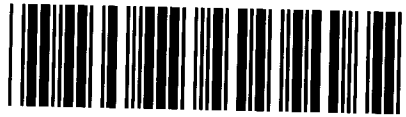




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Item Number: 16

Addendum StartPage: 0

DOCKET NO. 44607

REMAND OF DOCKET NO. 34332
(COMPLAINT OF HARRIS COUNTY
HOSPITAL DISTRICT AGAINST
SOUTHWESTERN BELL TELEPHONE,
LP d/b/a AT&T TEXAS)

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PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER ON REMAND

This Order on Remand addresses the disposition of Docket No. 34332, *Complaint of Harris County Hospital District against Southwestern Bell Telephone, LP d/b/a AT&T Texas*, on remand from the District Court of Travis County.¹ A Stipulation on Findings of Fact (Stipulation) is presented for approval. The Stipulation is approved.

The Public Utility Commission of Texas (Commission) adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. This proceeding originated before the Commission on a complaint, Docket No. 34332,² filed by Harris County Hospital District (HCHD) against Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T) alleging improper application of late payment charges in violation of the Prompt Payment Act.³ State of Texas intervened in Docket No. 34332.
2. On April 15, 2009, the Commission issued a final Order finding, in part, that given the specific facts of the case, it was appropriate to limit the amount that AT&T was required

¹ *Harris County Hospital District v. Public Utility Commission of Texas*, Cause No. D-1-GN-09-002116 (250th Judicial Dist. Ct., Travis County, Texas) (filed Mar. 27, 2015).

² *Complaint of Harris County Hospital District against AT&T Texas*, Docket No. 34332 (Apr. 15, 2009).

³ Tex. Gov't Code Ann. § 2251.001-.055 (West 2008 & Supp. 2014).

to refund "to the amount of overcharges over the last six and one-half years, plus interest"⁴ and granting HCHD partial relief.⁵

3. In the Commission's final Order of April 15, 2009, the Commission ordered AT&T to pay "HCHD overcharges running back six and one-half years from September 2008, with interest until paid."⁶
4. On June 18, 2009, AT&T paid HCHD \$338,745.23, which represents the amount of the overcharges going back six and one-half years from September 2008 (with interest through June 2009) in accordance with the Commission's final Order of April 15, 2009.⁷
5. HCHD subsequently appealed the final Order to the Travis County District Court, which affirmed the Commission's final Order.⁸
6. HCHD then appealed that judgment to the Third Court of Appeals, which reversed the judgment of the Travis County District Court and remanded the case to the Travis County District Court for further proceedings consistent with its opinion.⁹
7. On remand, the Travis County District Court issued a Final Judgment, which denied HCHD's Motion to Sever Claims for Attorney and Expert Fees and Costs and to Abate the Severed Claims and ultimately reversed and remanded the Commission's final Order for further proceedings consistent with the appellate court's opinion.¹⁰

⁴ See *Id.* at pg. 5 (Finding of Fact 15A).

⁵ See *Id.* at pg. 6 (Ordering Paragraph No. 1).

⁶ See *Id.* (Ordering Paragraph No. 2).

⁷ See *Complaint of HCHD against AT&T*, Docket No. 34332, Notice of Check Made Payable to HCHD (Jun. 18, 2009).

⁸ See *HCHD v. PUC*, Cause No. D-1-GN-09-002116, Order (250th Judicial Dist. Court, Travis County) (filed Jun. 29, 2010).

⁹ *HCHD v. PUC*, 2012 WL 2989228 (Tex. App.—Austin 2012, no pet.) (mem. op., not designated for publication).

¹⁰ See *HCHD v. PUC*, Cause No. D-1-GN-09-002116, Final Judgment at pg. 2 (250th Judicial Dist. Court, Travis County) (filed Mar. 27, 2015).

8. On June 15, 2015, HCHD, AT&T, and State of Texas Agencies and Institutions of Higher Education (State Agencies)¹¹ (collectively Parties) filed a Stipulation and stated that Commission Staff is not joining and not opposing the Stipulation.
9. The outstanding refund due and owing by AT&T to HCHD in Docket No. 34332 is \$167,235.02 (with interest through May 17, 2015). Additional interest accrues on the foregoing amount beginning May 18, 2015 at a rate of \$0.56 per day until the day that AT&T mails the payment to HCHD.
10. Notwithstanding anything in the Stipulation on Findings of Fact that may be construed to the contrary, by entering into or not opposing the Stipulation on Findings of Fact, no party is compromising, settling, or waiving any claims, rights or remedies HCHD may have under Tex. Util. Code Ann. § 15.003, or any party's objections to such claims, including, but not limited to, any right HCHD may have to appeal the portions of the Final Judgment denying HCHD's claims under Tex. Util. Code Ann. § 15.003 or any right HCHD may have to pursue § 15.003 claims at the district court or the Commission, if any, or any party's objections to such claims.
11. Notwithstanding anything in the Stipulation on Findings of Fact that may be construed to the contrary, the Stipulation on Findings of Fact shall not affect any claims, rights, or remedies HCHD may have to recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs under Tex. Util. Code Ann. § 15.003, if any, or any party's objections to such claims.

II. Conclusions of Law

1. This matter is properly before the Commission on remand from the Travis County District Court (250th District), Case No. D-1-GN-09-002116 (March 27, 2015).

¹¹ State Agencies agreed in principle pending final executive approval. On July 22, 2015, State Agencies informed the Commission that State Agencies had received final executive approval to fully join in the Stipulation on Findings of Fact.

2. As a result of the remand and this Order and upon AT&T's compliance therewith, the complaint of HCHD against AT&T in Docket No. 34332 is fully adjudicated between the Parties.
3. Upon HCHD's receipt of AT&T's payment of \$167,235.02 (plus additional interest accrued on the foregoing amount beginning May 18, 2015 at a rate of \$0.56 per day until the day that AT&T mails the payment to HCHD), the total outstanding refund due to HCHD arising from the complaint of HCHD against AT&T in Docket No. 34332, HCHD's claims asserted against AT&T in Docket No. 34332 are fully satisfied.
4. This proceeding on remand was processed in accordance with the requirements of PURA,¹² the Texas Administrative Procedure Act,¹³ Commission rules, and the Mandate, Judgment and Memorandum Opinion of the Third Court of Appeals in Case No. 03-10-00647-CV.
5. The requirements for informal disposition pursuant to 16 Tex. Admin. Code § 22.35(b)(2) have been met in this proceeding.

III. Ordering Paragraphs

In accordance with the above findings of fact and conclusions of law, the Commission issues the following Order:

1. AT&T is ordered to pay \$167,235.02 (plus additional interest accrued on the foregoing amount beginning May 18, 2015 at a rate of \$0.56 per day until the day that AT&T mails the payment to HCHD) to HCHD in full satisfaction of HCHD's claims alleging improper application of late payment charges in violation of the Prompt Payment Act from at least 1995 through September 2008 (with interest).
2. AT&T's payment shall be made no later than 60 days after the date this Order is signed.
3. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Stipulation. Entry of this Order consistent

¹² Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016 (West 2007 & Supp. 2014) (PURA).

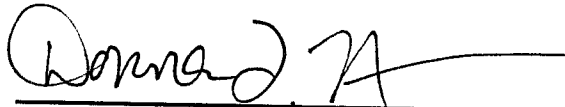
¹³ Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001-.902 (West 2008 & Supp. 2014) (APA).

with the Stipulation shall not be regarded as a binding holding or precedent as to the appropriateness of any principle or methodology underlying the Stipulation.

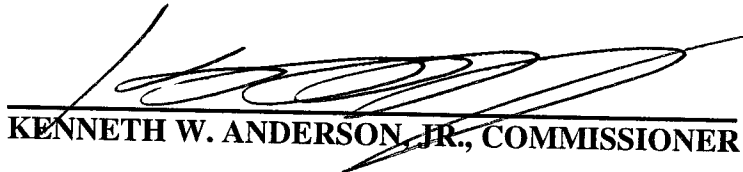
4. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the 30th day of July 2015.

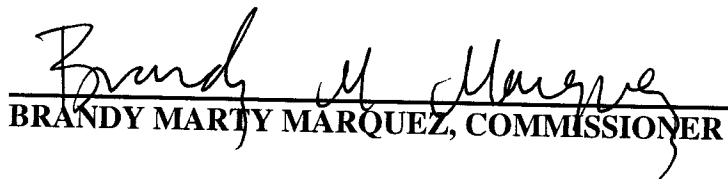
PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER