



Control Number: 47897



Item Number: 193

Addendum StartPage: 0

RECEIVED

PUC DOCKET NO. 47897
SOAH DOCKET NO. 473-18-3008.WS

2018 JUN 25 AM 10:53

APPLICATION OF FOREST GLEN §
UTILITY COMPANY FOR AUTHORITY § STATE OFFICE OF ADMINISTRATIVE
TO CHANGE RATES § HEARINGS

PUBLIC UTILITY COMMISSION
BEFORE THE

RESPONSE TO MOTION TO DENY ALIGNMENT OF INTERVENORS

COMES NOW, Forest Glen Utility Company ("FGU" or "Applicant") and files this Response to Motion to Deny Alignment of Intervenor¹s filed by Intervenor¹s, and in support thereof, would respectfully show the following:

I. BACKGROUND

At the Prehearing Conference on May 18, 2018, the State Office of Administrative Hearings ("SOAH") Administrative Law Judge ("ALJ") asked if the four (4) individual intervenors would agree to be aligned for purposes of participating in the above-docketed hearing. At that time, Intervenor¹s declined. On June 18, 2018, FGU filed a Motion to Align Intervenor¹s and Require Electronic Service requesting that the ALJ now impose alignment and electronic filing requirements. The Intervenor¹s did not file a response to FGU's Motion but rather filed a Motion to Deny Alignment of Intervenor¹s on June 22, 2018. Intervenor¹s' Motion did not state any opposition to FGU's request to require electronic filing only.² This response is timely filed.

II. AUTHORITIES

Title 16 Texas Administrative Code (TAC) § 22.105 authorizes the ALJ to align parties who share the same positions on issues of fact or law.³ Alignment should be required to avoid unnecessary duplication of effort and to allow aligned parties an adequate opportunity to prepare

¹ Messrs. Van Johnson, Dennis Brown, Cecil Perkins and Fleming Mitchell, hereinafter "Intervenor¹s."

² FGU assumes for purposes of this Response that Intervenor¹s do not object to electronic filing and will not

² FGU assumes for purposes of this Response that Intervenor¹s do not object to electronic filing and will not address that issue herein.

³ 16 TAC § 22.105.

for hearing.⁴ Alignment also affords a more efficient hearing process, not only in the pretrial stages but during the hearing on the merits including cross-examination.⁵ It is the long-standing policy and practice of the PUC and its predecessor agency, the Texas Commission on Environmental Quality (“TCEQ”) to align individual protestants, especially those who are *pro se*.

III. ARGUMENT

Perhaps mistakenly, the Intervenor move for denial of an alignment which has not yet occurred. The four (4) *pro se* individual intervenors announce their objection in one motion signed by all Intervenor, in other words, exactly as you would expect an aligned group of protesting parties to act – in concert. The Intervenor’s Motion speaks in the collective “we” and “us” throughout. And in the couple places where Mr. Johnson speaks in the first person,⁶ he clearly does so on behalf of the group. That is, as the *de facto* representative of the aligned group. There is nothing in Intervenor’s Motion to suggest acting as a whole with one voice is somehow burdensome or harmful to their ability to fully prepare for and participate in this case.

The stated reason for Intervenor’s objection to alignment is really no objection at all:

Each of us have issues related to Forest Glen as a whole and are separate for the following reasoning: [u]pon conversations between each other, we realize the impact, documents, communications, etc. were from different perspectives based on reason for contact and documents received by each intervenor at the time of purchasing their home and subsequent dealings with Forest Glen and or Yancey Water Corporation billing statements. There for we oppose the alignment into a single representative.⁷

That each of the four (4) Intervenor may have a different perspective or different grounds to support their position does not discount that they are all united in their opposition to FGU’s rate increase. Homes purchased at different times would not appear to thwart that ultimate goal. Alignment will not prevent the Intervenor’s ability to demonstrate these multiple grounds for

⁴ *Id.*

⁵ *Id.*

⁶ Even in his unsigned Certificate of Service and recitation of contact efforts by FGU, Mr. Johnson purports to speak on behalf of the group of “we, intervenors.”

⁷ Intervenor’s Motion to Deny Alignment of Intervenor at 1.

denial of FGU's application if they have them. On the contrary, alignment will actually facilitate Intervenor's ability to put on their case without duplicating issues or duplicating the resources⁸ of the other parties and SOAH. Alignment of *pro se* parties at the PUC and TCEQ is a common and common-sense practice.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Forest Glen Utility Company requests that the ALJ align the four (4) individual Intervenor's and any future intervenor(s) in a group represented by a single representative.

Respectfully submitted,

Randall B. Wilburn
State Bar No. 24033342
Helen S. Gilbert
State Bar No. 00786263
GILBERT WILBURN PLLC
7000 N. MoPac Expwy, Suite 200
Austin, Texas 78731
Telephone: (512) 494-5341
Telecopier: (512) 472-4014

By: Helen S. Gilbert

Helen S. Gilbert

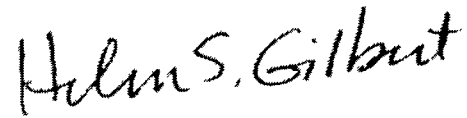
**ATTORNEYS FOR FOREST GLEN
UTILITY COMPANY**

⁸ A lack of alignment will only result in higher rate case expenses surcharged through rates to Intervenor's should FGU's application be approved.

CERTIFICATE OF SERVICE

I hereby certify that I have or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on the 25th of June 2018.

By:



Helen S. Gilbert