Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*

Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 9, 2011

Melissa Chao, Acting Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

RE: Application of Texas Landing Utilities to change its water and sewer rates/tariff under CCN Nos. 11997 and 20569 in Polk and Montgomery Counties. SOAH Docket No. 582-08-1023; TCEQ Docket No. 2007-1867-UCR.

Dear Mr. Trobman and the Honorable Judge Keeper:

Enclosed for filing with the Texas Commission on Environmental Quality is the original plus seven copies of "The Office of Public Interest Counsel's Exceptions to the Proposal for Decision."

By letter dated May 27, 2011, General Counsel previously extended the filing deadline for exceptions to the proposal for decision until June 7, 2011. Due to an interoffice error, this deadline was missed.

OPIC has conferred with the other parties regarding this filing and there was no objection to its submission on June 9, 2011. No party requested changes to the reply to exceptions deadline of June 17, 2011. OPIC therefore requests that the Honorable Judge and General Counsel of the Commission consider the attached exceptions to the proposal for decision be considered under 30 TAC §1.10(h).

Sincerely,

Eli Martinez
Assistant Public Interest Counsel

cc: Mailing List
Enclosure

SOAH DOCKET NO. 582-08-1023

TCEQ DOCKET NO. 2007-1867-UCR

APPLICATION FOR A WATER RATE/TARIFF CHANGE OF TEXAS LANDING UTILITIES, CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 11997 IN POLK COUNTY, APPLICATION NO. 35838-R AND CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 20569 IN POLK COUNTY, APPLICATION NO. 35840-R	**BEFORE THE STATE OFFICE OF** **ADMINISTRATIVE HEARINGS**

THE OFFICE OF PUBLIC INTEREST COUNSEL'S EXEPTIONS TO THE PROPOSAL FOR DECISION

TO THE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files these Exceptions to the Proposal for Decision in the above-referenced matter and respectfully shows the following.

OPIC recommends the Commission not adopt the ALJ's Finding of Fact No. 57 and Conclusions of Law Nos. 16, 17, and 18, regarding the TLU's ability to recover its rate case expenses from its customers. The rate case expenses requested by TLU are not reasonable, necessary, and in the public interest.

I. Procedural Background

Texas Landing Utility (TLU) filed applications with the TCEQ to consolidate and increase the rates for its retail water and sewer services provided to customers in Polk and Montgomery Counties. More than 10 percent of the utility's customers protested the rate increase and a hearing on the merits was held at the State Office of Administrative Hearings (SOAH) in Austin, Texas on May 21-22, 2009. After considering the resulting proposal for decision presented at the Commission Agenda on February 10, 2010, the matter was remanded for additional evidence on the issues of rate case expenses and line loss. The remand hearing took place at a hearing on January

12, 2011 at SOAH in Austin, Texas. On May 9, 2011, A Proposal for Decision (PFD) was issued by Administrative Law Judge Paul Keeper.

OPIC excepts to the ALJ's conclusions regarding allowable rate case expenses.

II. Form Exception to Finding of Fact No. 57

OPIC excepts to the ALJ's Finding of Fact No. 57. Finding of Fact No. 57 does not accurately mirror language from 30 TAC § 291.28(7), which states that a utility may recover rate case expenses, including attorney's fees, incurred as a result of a rate change application only if the expenses are "reasonable," "necessary," and "in the public interest." Instead, Finding of Fact No. 57 uses the language "reasonable and appropriate." Regardless of the conclusion, the language in this finding of fact should reference the language from the rule under which the ALJ has made the finding.

III. Reasonableness and Necessity

OPIC excepts to the ALJ's conclusions on the reasonableness and necessity of TLU's claimed rate case expenses, as reflected in Finding of Fact No. 57 and Conclusions of Law Nos. 16, 17, and 18. OPIC asks that the Commission consider those arguments OPIC put forth in its Closing Arguments, when deciding whether to adopt the ALJ's recommendations.

IV. Public Interest

OPIC excepts to the ALJ's conclusion regarding "public interest." As the draft order does not include any findings of fact or conclusions of law on the public interest factor, OPIC cannot except to any specific findings or conclusions on public interest, but instead excepts to ALJ's Finding of Fact No. 57 and Conclusions of Law Nos. 16, 17, and 18, summarizing the ALJ's conclusions on rate case expenses.

OPIC excepts to the ALJ's conclusions on public interest because the discussion of this issue contains little factual analysis, instead reciting Texas caselaw, listing suggested policies that the Commission could adopt, and then simply concluding that if the rates are necessary and reasonable, then they must also be in the public interest. OPIC finds this unpersuasive and inaccurate, as the application of 30 TAC § 291.28(7) is

a question of fact, not of law. Further, rate case expenses should bear a reasonable relationship to the amount of the rate increase allowed by the Commission. Requiring TLU's customers to pay rate case expenses in great excess of the net worth of the utility, and more than four times the proposed increase in annual revenue, would not be in the public interest.

In the ALJ's discussion of whether certain rate case expenses are in the public interest, he begins his analysis by stating that this is an issue of law, not of fact.[1] OPIC disagrees with this characterization. First, in *R.R. Comm'n of Texas v. Citizens for a Safe Future & Clean Water*, the Texas Supreme Court states that an appellate court's determination of the statutory meaning of "public interest" is a question of law, for the purpose of determining the standard of review.[2] This is very different from the present situation, where the ALJ is not acting as an appellate court, but instead is acting as the factfinder for a state agency. No previous determination has been made as to whether the present facts indicate that awarding attorneys fees to TLU would be in the public interest. The ALJ is being asked to apply TCEQ's rules to the facts at hand, using the agency's interpretations of these rules, not to address the agency interpretation of these rules. Because "public interest" is an open-ended term, this may require the ALJ to determine what constitutes the "public interest" in this situation, but it does not make this a question of law. Furthermore, if the ALJ could not determine the meaning of "in the public interest" as it applies in this situation, the more appropriate approach may have been to certify a question to the Commission.

The determination of whether it is in the public interest to pass TLU's claimed legal fees of $248,175.60 onto its customers requires the ALJ to apply the facts in this case. The ALJ summarizes existing caselaw and suggests policy that the agency should adopt on this issue. However, his opinion does not articulate the factual basis for his

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[1] Proposal for Decision on Remand (Remand PFD), SOAH Docket No. 582-08-1023, TCEQ Docket No. 2007-1867-UCR at 7 (citing *RR. Comm'n 'n of Tex. v. Tex. Citizens for a Safe Future & Clean Water*, 2011 Tex. LEXIS I92, *28-29(Tex. 20] 1); Bouquet v. Herring, 972 S.W.2d at 21).

[2] *RR. Comm'n of Tex. v. Tex. Citizens for a Safe Future & Clean Water*, 2011 Tex. LEXIS I92, *28-29 (Tex. 20] 1) (stating "the construction of a statute is a question of law we review de novo."); *First Am. Title Ins. Co. v. Combs*, 258 S.W.3d 627, 631 (Tex. 2008); *F.F.P. Operating Partners, L.P. v. Duenez*, 237 S.W.3d 680, 683 (Tex. 2007).

determination. Because the ALJ provides no factual basis for his determination, OPIC questions whether the ALJ has properly evaluated the public interest element of 30 TAC § 291.28(7).

The ALJ's conclusion that "because the expenses are reasonable and necessary, the commission should adopt [the attorneys fees] as in the public interest" is also inconsistent with the cited caselaw. The ALJ first references *Ridge Oil v. Guinn Investments, Inc.*[3] for the proposition that a court may conclude that even reasonable and necessary fees may not be just and equitable (i.e. in the public interest). However he does not address this further, going on to conclude that, based on *Industrial Utility Services v. Texas Natural Resources Commission*,[4] the attorney's fees were reasonable and necessary and therefore also in the public interest.[5]

A finding of reasonableness and necessity does not automatically mean that the public interest portion of 30 TAC § 291.28(7) has been met. *Industrial Utility Services* does not stand for this proposition, and indeed includes little analysis of the interplay between these terms. Instead it is an "unexpected anomaly" of a case, where a utility was not awarded attorneys fees because it argued against the Commission granting its own request, in order to influence a matter not subject to Commission proceedings. This case does show that the Commission has authority to curtail rate case expenses in situations where a utility has wasted TCEQ resources,[6] but does not show that the public interest concerns are swallowed within the "reasonable and necessary" determination.

In addition, the ALJ did not analyze the relationship between the amount of the increase requested and the amount of attorneys fees incurred in relation to that request, instead arguing that there is no stated TCEQ policy on "public interest." But the Commission can and has considered this issue in similar matters. The ALJ himself acknowledged the Commission's position in previous litigation that "rate case expenses

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[3] *Ridge Oil Co. v. Guinn Invs., Inc.*, 148 S.W.3d 143, 161–162 (Tex. 2004).

[4] 947 S.W.2d 712 (Tex. App.—Austin 1997, writ den.) (*Industrial Utility Services*).

[5] Remand PFD at 26.

[6] 947 S.W.2d at 716.

should bear a reasonable relationship to the amount of rate increase allowed..."[7] The ED even presented testimony on this issue during the Remand Hearing:

> The applicant is claiming more in rate case expenses than the net worth of the utility and more than four times the proposed increase in annual revenue. The rate case expenses requested in this matter are five times more than the cost of service originally requested. If the utility is allowed to recover all of its claimed rate case expenses over a two year period, the ratepayers' monthly surcharge would be higher than the base rate they would pay for water.
>
> The Executive Director's Supplemental Direct Testimony of Sheresia Perryman, pages 3-4, at lines 23-4.

The ALJ should have considered this in his determination on whether forcing TLU's customers to pay the disproportionate amount of attorneys fees incurred by TLU was in the public interest. And had he done so, it would have led him to a different conclusion.

As discussed in OPIC's Closing Arguments, if the public interest is construed too far on the side of conservative lawyering, utilities will be unfairly limited in their efforts to seek reasonable rates. This could endanger the financial integrity of the system and force the utility to unfairly shoulder the responsibility of providing continuous water and/or sewer service to ratepayers, as mandated by its Certificates of Convenience and Necessity.

On the other hand, if the public interest is construed too liberally, as to include any and all efforts made by a utility to pursue their application, regardless of proportionality or propriety, ratepayers are harmed. Such an interpretation of 30 TAC § 291.28(7) leaves ratepayers susceptible to a war of attrition in which legal fees are used to punish those who dare to contest a proposed rate increase.

The public interest clause is meant to protect against the type of disproportion of fees compared to actual rate increase sought in this case. Where a policy of proportionality is enforced, utilities will adjust their litigation strategies accordingly.

The Commission must strike a balance. And in each rate case, the appropriate balance will be dictated by the facts. In this scenario, the approach recommended by the Executive Director—in which four similar cases over the last ten years were averaged and the resulting figure adjusted upward for work spent on extraneous issues—is

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[7] Remand PFD at 24; *Texas Water Commission v. Lakeshore Utility Company* 877 S.W.2d at 825 (Tex. App.—Austin 1994, no writ).

reasonable, not arbitrarily determined, and arrives at a figure that is in the public interest. OPIC therefore recommends that Texas Landing Utilities be awarded rate case expenses in the amount of $60,756.00.

V. Conclusion

OPIC cannot find that the entirety of the work performed by the Terrill Firm and Marvin Morgan were necessary to meet the burden imposed on TLU in pursuing its rate application. Furthermore, full recovery of the rate case expenses proposed by Applicant would result in a disproportionate surcharge in relation to the size of the utility and requested rate increase, and is therefore not in the public interest. Because of this, the Commission should not adopt the ALJ's Finding of Fact No. 57 and Conclusions of Law Nos. 16, 17, and 18, and instead adopt the ED's recommended rate case expenses of $60,756.00.

Respectfully submitted,

Blas J. Coy, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on June 9th, 2011 the Office of Public Interest Counsel's Exceptions to the PFD was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

Eli Martinez

MAILING LIST
TEXAS LANDING UTILITIES
SOAH DOCKET NO. 582-08-1023
TCEQ DOCKET NO. 2007-1867-UCR

The Honorable Paul D. Keeper
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Carlos Rubinstein, *Commissioner*

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 14, 2009

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
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Austin, Texas 78711-3087

Re: **TEXAS LANDING UTILITIES**
SOAH DOCKET NO. 582-08-1023
TCEQ DOCKET NO. 2007-1867-UCR

Dear Ms. Castañuela:

Enclosed for filing is the Office of Public Interest Counsel's Exceptions to Proposal for Decision in the above-entitled matter.

Sincerely,

Eli Martinez, Attorney
Assistant Public Interest Counsel

cc: Mailing list

Enclosure

SOAH DOCKET NO. 582-08-1023
TCEQ DOCKET NO. 2007-1867-UCR

APPLICATION OF TEXAS LANDING UTILITIES FOR A WATER RATE/TARIFF CHANGE, CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 11997 IN POLK AND MONTGOMERY COUNTIES; AND FOR A SEWER RATE/TARIFF CHANGE, CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 20569 IN POLK AND MONTGOMERY COUNTIES	§ § § § § § § § § § § § §	**BEFORE THE STATE OFFICE** **OF** **ADMINISTRATIVE HEARINGS**

OFFICE OF PUBLIC INTEREST COUNSEL'S
EXCEPTIONS TO PROPOSAL FOR DECISION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or Commission) submits the following Exceptions to Proposal for Decision in the above-styled matter and would respectfully show the following:

I. Substantial Similarity

Texas Water Code § 13.145(a) clearly states a utility may consolidate more than one system under a single tariff only if: (1) the systems under the tariff are substantially similar in terms of facilities, quality and cost of service; and (2) the tariff provides for rates that promote water conservation. This language is tracked under 30 Tex. Admin. Code § 231.21(m). Crucially, the burden of this showing falls squarely on the Applicant.[1] There is no presumption afforded the utility, who must be equal to the task of overcoming the assumption that the facilities are not substantially similar via evidence produced at trial. In a rate case in which some

[1] TEX. WATER CODE ANN. §13.183(a).

$142,314.81 of rate case expenses were accrued, which the honorable judge recommends the ratepayers bear via surcharge, this demonstration should have been quite clear. It was not.

The PFD mistakenly concludes that there is no legitimate dispute as to substantial similarity of facilities or quality of service, and mysteriously finds that, although no comparative cost of service evidence was introduced by the Applicant, TLU has still managed to meet their affirmative burden of demonstrating substantial similarity as to cost of service. OPIC disagrees. TLU has not met their burden, and OPIC urges that the honorable judge reconsider her opinion how an Applicant may meet the singular protection afforded ratepayers in the form of Applicant's §13.145(a) burden.

A. Facilities and Quality of Service

Chapter 311 of the Government Code is known as the Code Construction Act.[2] It applies to the Water Code and the Commission's rules adopted under the Water Code.[3] Under the Code Construction Act, it is presumed that an entire statute is intended to be effective.[4] If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given them both.[5] If the conflict between the general provision and special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.[6] Words and phrases in statutes and rules are to be read in

[2] Gov't Code §311.001.
[3] Gov't Code §311.000(1) & (4).
[4] Gov't Code §311.021(2).
[5] Gov't Code §311.026(a).
[6] Gov't Code §311.026(b).

context and construed according to common usage unless they have acquired a technical or particular meaning by legislative definition or otherwise.[7] Moreover, in construing a statute, the following may be considered:

1. object sought to be attained;
2. circumstances under which the statute was enacted;
3. legislative history;
4. common law or former statutory provisions, including laws on the same or similar subjects;
5. consequences of a particular construction;
6. administrative construction of the statute; and
7. title (caption), preamble, and emergency provision.[8]

As stated, under Texas Water Code § 13.145(a) a utility may consolidate more than one system under a single tariff only if, *inter alia*, facilities and quality of service of each facility are substantially similar. A common utility owns all of the facilities involved in every case where consolidation is sought *ipso facto* due to the fact that a utility cannot seek a consolidated rate for systems which they do not own. Thus, those factors listed in the PFD that relate only to ownership, such as operation, management, and customer service, are simply not relevant to a showing of substantial similarity. Similarly, in all cases where consolidation is sought, the facilities involved are water systems comprised of water utility equipment. The mere existence of PVC pipes, pressure tanks, piping, and the use of chlorination do little to prove anything beyond the fact that what is being addressed is a water utility. Giving lopsided consideration to such factors renders the statutory requirement of "substantial similarity" of systems owned and operated by the same utility a tautology. Strong evidence was produced at

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[7] Gov't Code §311.026(b).
[8] Gov't Code § 311.023

trial that supports a finding that the systems are not substantially similar, and in fact dissimilar.

Karen Mann, testifying on behalf of TLU, stated during cross examination that the lines used in the Texas Landing water system were 20-30 plus years old, as opposed to the relatively new lines present in the Goode City system, which has only been operational since June 2005. Ms. Mann also testified that the lines for the Texas Landing system lie in "gumbo mud," which tends to dry up in the summertime and "pull our pipes apart at the joints causing leaks,"[9] though no such soil or problems exist in the Goode City system. These factors result in a disproportionately high line loss, 21%, for the Texas Landing System. The fact that one set of lines is aged and faces maintenance problems, coupled with the resultant line loss, speaks to a dissimilarity that overshadows the fact that piping merely exists in both systems.

Further, Mr. Sheffield testified that arsenic problems exist in the Texas Landing system, which he manages by "blending" the water from the well that exceeds compliance standards with wells that have no such arsenic problems within the same system. The Goode City utility does not have wells with elevated arsenic problems. This difference is substantial if one or more of the wells without elevated arsenic levels were to go out and the $114,495.00 savings[10] that Mr. Sheffield states he saved the ratepayers of Texas Landing utility come back to haunt not only customers of that utility, but the newly-regionalized rate payers of Goode City as well.

While it is true that TLU owns all of the facilities involved, and that those facilities provide water to residential customers, these facts are insufficient to overcome the dissimilarities involved in the respective systems. An aged system, wrought with line loss and impending

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[9] P. 125, lines 4-10.
[10] Direct Testimony of David Sheffield, P. 20, line 7.

equipment replacement, operating with an arsenic-contaminated well, is not the same as a new facility with little line loss, no known arsenic issues, or recurring battles with the local geology.

B. Cost of Service

Cost of service is the amount of revenue required to cover the reasonable and necessary expenses incurred by the utility to provide water and sewer service to its customers and provide a fair and reasonable return on the invested capital needed to provide service. It is, in short, the very basis of the rate to which a utility is entitled. In a case involving regionalization, it is of utmost importance because it is the only way to ensure that one set of ratepayers is not subsidizing the costs of a system that is more expensive to run.

The honorable judge finds that this important burden in the instant case is "minimal," based on the rationale that "no commission rules required TLU to provide the cost of service of each water system and because *Aqua Texas* was established precedent before TLU filed its case." Respectfully, the exact same argument could have been made about the Applicant's evidentiary burden in *Double Diamond*,[11] which the commissioners found the Applicant failed to meet. The utter nonexistence of evidence from TLU supporting substantially similarity of costs of service does not somehow meet the burden placed on TLU, nor does it surpass in clarity the relatively in-depth discussion adduced by Double Diamond in their hearing. Further, the insufficiency of TLPOA's attempts to demonstrate disparity of cost of service does not somehow rehabilitate TLU's evidentiary lapse. Substantial similarity of cost of service is not a burden placed on TLPOA. Nor is cost of service a surprise issue or ancillary issue—it was raised by TLPOA, and

[11] SOAH Docket No. 582-08-0698; TCEQ Docket No. 2007-1708-UCR; Application of Double Diamond Utilities, Inc. to Change its Water Rate and Tariff, in Hill, Palo Pinto, and Johnson Counties, Texas Application No. 35771-R.

even more importantly, it is an explicit statutory obligation.

The honorable judge states that the "only" attempt to attempt to draw a comparison between costs of service was made by TLPOA. In reaching the conclusion that the costs of service between the systems at issue are nonetheless substantially similar, the honorable judge gives great weight to factors that relate to common management such as employee benefits, IT systems, purchasing policies, and contracts for services and products. In a second theoretical step, the judge, *sua sponte*, combines the hypothetical costs of the Texas Landing Subdivision and Magnum systems with the hypothetical costs of the Goode City system. Such theoretical alignment produces a figure which "would likely be more similar, but (provides) insufficient information from which to derive a finding."[12] This is not the stuff from which an affirmative statutory burden is satisfied, and evidence was produced at trial which, above and beyond, left some indication that cost of service may in fact be quite disparate across TLU's systems.

The Texas Landing system serves an "established" subdivision that will generate little new tap revenue, whereas the Goode City system has only been in service since June 2005 and is serving a "new and growing subdivision."[13] Even assuming that the expenses will off-set each other on the books with the addition of depreciation expenses and tap revenue, that is not the inquiry before the court and not the correct standard to apply in determining whether a regional rate is appropriate. The statute clearly states that the systems must be substantially similar. This does not mean, as the Applicant suggests, that the systems are substantially similar over a period of years. The systems must be substantially similar during the course of the test year—indeed

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[12] *Texas Landing Utilities*, PFD at 8.
[13] Direct Testimony of Sheresia Perryman, P. 12, Lines 5-15.

that is the very point of having a test year that determines costs over a measurable period of time.

Furthermore, the Goode City and Texas Landing systems could not be more different in terms of age and connections. The Texas Landing system serves 138 connections, while the Goode City system serves only 14. As stated by Sheresia Perryman, the nearly twenty year-old Texas Landing system commands "repairs and maintenance expenses that are typically much greater than that of Goode City."[14] The difference in these expenses are explained by reference to equalizing force of allowable depreciation, but depreciation is not a real cost, it is a book cost used to determine when a piece of equipment will near the end of its useful life. Thus, a difference in allowable depreciation is not an indicator of similarity, but rather of dissimilarity between old and new system components.

The preceding examples notwithstanding, the fact is that it is not OPIC's burden to prove that TLU's systems incur similar costs of service. That burden was TLU's alone. OPIC agrees that the passage quoted by the honorable judge from the Double Diamond PFD, which was adopted by the Commissioners, is analogous to the case at hand:

> The ALJ appreciates the position of the McCartneys that the ratepayers at the Retreat may pay higher rates if the Commission requires different rates for the Retreat and White Bluff water systems. The Retreat is a relatively new development with few ratepayers paying the expenses of a system designed to serve more connections. Nonetheless, as pointed out by OPIC, by combining the Retreat and White Bliff water systems under one rate, an older, established development would be subsidizing the newer development. This would not result

[14] Direct Testimony of Sheresia Perryman, P. 11, Lines 20-21.

in water rates that are just and reasonable for the White Bluff ratepayers.[15] Without the conclusive evidence required of TLU to demonstrate that such a disparity would not take place in the instant case, Applicant's §13.145(a) burden has not been met and they are statutorily prohibited from regionalization approval.

II. CONCLUSION

For the foregoing reasons, OPIC excepts to the honorable judges PFD and recommends denying TLU's request for a regional rate. Furthermore, OPIC excepts to the recoupment of any rate case expenses owing to TLU's failure to meet their statutory burden.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

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[15] *Double Diamond*, PFD at 19-20.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2009, the of the Office of Public Interest Counsel's Exceptions to Proposal for Decision was served upon Chief Clerk of the TCEQ and a copy was served upon all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.

Eli Martinez

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SOAH DOCKET NO. 582-08-1023
TCEQ DOCKET NO. 2007-1867-UCR

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