

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

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

**PROTESTANT TEXAS LANDING PROPERTY OWNERS’
ASSOCIATION’S REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION**

Protestant, Texas Landing Property Owners’ Association (“TLPOA”) files the following Reply to Exceptions to the Administrative Law Judge’s (“ALJ”) proposal for decision (“PFD”). In support of its reply, TLPOA shows the following:

This reply responds to statements made by the Executive Director (“ED”) and Texas Landing Utilities in their exceptions to the PFD. The record from the contested case hearing, TLPOA’s closing arguments, and TLPOA’s Exceptions to the ALJ’s PFD set forth the primary contested issues—an applicant that does not own the utility seeks a rate change; the lack of substantial similarity between the different systems; the rate of return; and the excessive and unreasonable rate case expenses sought by Texas Landing Utilities—and TLPOA’s position with respect to those issues.

TLPOA supports and agrees with the Exceptions from the Office of Public Interest Counsel. TLPOA maintains its original position that Texas Landing Utilities did not meet its burden of proof entitling it to consolidation of the Goode City and Polk County systems. Had the Executive Director’s staff examined the data provided by Texas Landing Utilities (“TLU”) as closely as they did in the application of *Double Diamond Utilities*, cost of service analyses

between the systems would have shown that they are not substantially similar and TLU would not be entitled to consolidation of its two systems. Further, TLPOA believes the ALJ's reliance on the fact that both facilities comprised of PVC pipes, pressure tanks, piping, and the use of chlorination does not prove that the facilities are substantially similar, but that they share the commonalities that all water utility systems share. TLPOA presented evidence that the cost of service between the Polk County systems and the Goode City system vary greatly. TLU's application should be denied.

As stated in its exceptions, TLPOA disagrees with Finding of Fact 46. The proper rate of return, utilizing the principles set forth in 30 Tex. Admin. Code § 291.31(c)(1)(A)-(C), is 8.48%. The calculations reflected in Findings of Fact 46 and 47 should reflect a rate of return of 8.48%.

TLPOA disagrees with each and every exception set forth by TLU. These matters are addressed in TLPOA's Closing Arguments and its Exceptions. TLPOA's primary disagreement is with TLU's continued disregard of the corporate form; its objections to the use of the Rate of Return worksheet, despite its incorporation of the principals set forth in 30 Tex. Admin. Code § 291.31(c)(1)(A)-(C); and TLU's repeated insistence that it can consolidate its tariffs without regard for Tex. Water Code § 13.145. Tex. Water §13.145's "goal" is not to promote regionalization. Its purpose is to set forth a standard that a utility must meet in order to consolidate its system. It prevents, as is the case in this instance, a developer from using one utility system to subsidize the costs of his new development and its system. Whether or not to allow a utility to regionalize its tariffs is considered under Tex. Water Code §13.182(d) and 30 Tex. Admin. Code § 291.21(n). This is a case of consolidation, not regionalization. Section 13.145 of the Texas Water Code requires TLU to show that its systems are substantially similar in terms of facilities, quality of service, and costs of service. While the TCEQ staff may favor

consolidation under any circumstance, the legislature has chosen to place a burden on TLU to show the systems sought to be consolidated are substantially similar in terms of costs of service, quality of service, and facilities. TLU has failed to meet that burden.

Therefore, TLPOA respectfully requests that the Commission sustain the Protestant's exceptions, and adopt an order denying TLU's Application for a Water Rate/Tariff Change.

Respectfully submitted,

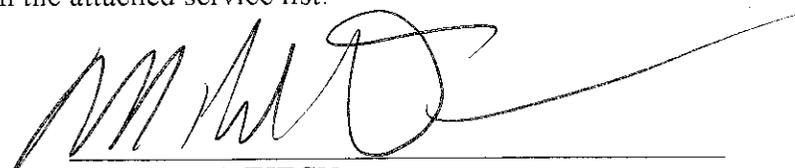
LAW OFFICES OF MICHAEL DEITCH
& ASSOCIATES
800 Rio Grande
Austin, TX 78701
512/474-1554
512/474-1579 (telecopy)
mike.d@dhpc-law.com (e-mail)
brian@dhpc-law.com (e-mail)

By 
MICHAEL DEITCH
STATE BAR NO. 05644550
BRIAN DEITCH
STATE BAR NO. 24067572

Attorneys for Texas Landing Property Owner's Association

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was telecopied the 23rd day of December, 2009, to the parties on the attached service list.


MICHAEL DEITCH

Service List

<p>Katherine L. Smith Administrative Law Judge State Office of Administrative Hearings Austin Office 300 W. 15th St., Suite 502 Austin, TX 78701 (512) 475-4993 (Tel.) (512) 475-4994 (Fax)</p>	<p style="text-align: center;">State Office of Administrative Hearings</p>
<p>Docket Clerk Texas Commission on Environmental Quality Office of the Chief Clerk P.O. Box 13087 Austin, TX 78711 (512) 239-3300 (Tel.) (512) 239-3311 (Fax)</p>	<p style="text-align: center;">Texas Commission on Environmental Quality</p>
<p>Ron Olson Staff Attorney Texas Commission on Environmental Quality Environmental Law Division P.O. Box 13087, MC-173 Austin, TX 78711-3087 (512) 239-0608 (Tel.) (512) 239-0606 (Fax)</p>	<p style="text-align: center;">Texas Commission on Environmental Quality</p>
<p>Eli Martinez Public Interest Counsel Texas Commission on Environmental Quality 12100 Park 35 Circle, MC-103, Building F Austin, TX 78753 (512) 239-6363 (Tel.) (512) 239-6367 (Fax)</p>	<p style="text-align: center;">Office of Public Interest Counsel</p>
<p>Geoffrey P. Kirshbaum The Terrill Firm, P.C. 810 West 10th Street Austin, TX 78701 (512) 474-9100 (Tel.) (512) 474-9888 (Fax)</p>	<p style="text-align: center;">Texas Landing Utilities</p>