Bill F. Bryan
95 S. Flagstone Path Circle
The Woodlands, Texas 77381

June 17, 2011

Docket Clerk
Office of the Chief Clerk
TCEQ
P.O. Box 13087
Austin, TX 78711

RE: 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 Conveyance and Necessity No. 20569 in Polk County, Application No. 35840-R

Dear Clerk:

Enclosed for filing in the above-referenced matter please find the original of Protestant Bill F. Bryan's Replies to Exceptions to Proposal for Decision with concurrence of David Veniotte and John Stacy. A copy will also be filed electronically with your office. By copy of this letter, the same is being sent to opposing counsel and all interested parties.

Sincerely,

Bill F. Bryan

Enclosures

Paul M. Terrill III
Geoffrey P. Kirshbaum
810 W. 10th St.
Austin, Texas 78701

Ron Olson
TCEQ, MC-173
P.O. Box 13087
Austin, TX 78711-3087

SOAH – Docket Clerk
300 W. 15th St., Suite 504
Austin, TX 78701

Eli Martinez
TCEQ, OPIC, MC-103
P.O. Box 13087
Austin, TX 78711-3087

Judge Paul Keeper
State Office of Administrative Hearings
300 West 15th St
Austin, TX 78701

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

APPLICATION FOR A WATER	§	BEFORE THE TEXAS COMMISSION
RATE/TARIFF CHANGE OF TEXAS	§	
LANDING UTILITIES, CERTIFICATE	§	
OF CONVENIENCE AND NECESSITY	§	
NO. 11997 IN POLK COUNTY,	§	ON
APPLICATION NO. 35838-R AND	§	
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY NO. 20569 IN POLK	§	
COUNTY, APPLICATION NO. 35840-R	§	ENVIRONMENTAL QUALITY

PROTESTANT BILL F. BRYAN'S REPLY TO EXCEPTIONS TO THE PROPOSED ORDER
WITH CONCURRANCE OF DAVID C. VEINOTTE AND JOHN STACEY

TO THE HONORABLE COMMISSIONERS OF THE TCEQ:

1. The Commissioners of the Texas Commission on Environmental Quality (TCEQ) finally received this case for decision on February 10, 2010, almost 2 ½ years after it was filed. The Commissioners decided all but two issues and remanded these for further consideration. A hearing was held on the merits of these two issues on January 12, 2011.
2. The two issues remanded by the Commissioners are the extraordinarily high rate case expenses of $248,175.60 submitted by the Applicant and how to properly address line loss issues.
3. The Administrative Law Judge (ALJ) issued a Proposal for Decision (PFD) on May 9, 2011 essentially adopting the Terrill's Law firm position on Attorney and rate case fees and addressing several other issues.

4. Exceptions to the PFD were filed by The Executive Director (ED), The Office of Public Interest Counsel (OPIC), TLU and the Protestant. TLU agreed with the finding of the ALJ concerning rate case expenses while the ED, OPIC and the Protestant most strongly disagreed. TLU filed exceptions concerning the recommendations of the ALJ about the line loss issue. The ED and the Protestant also disagreed with other provisions of the PFD, especially concerning the ALJ proposing to stop refunds by TLU to its customers for over collection of rates as of January of 2010.

5. The Protestant agrees with the ED in almost each and every sentence written by the ED, except for two small points that will be addressed herein. The Protestant agrees in total with OPIC. The Protestant would like to compliment the Attorney with the ED and the Attorneys with OIPC that wrote their scholarly and well written exceptions. The exceptions were an excellent treatise on prevailing water law and very ably illustrate the erroneous and biased reasoning of the ALJ. The Protestant does disagree with ED concerning: 1) the recommendation of requiring the Protestants to pay the $8756.00 above the recommended rate case expenses of $52,000.00. and 2) the lack of adoption by the ED of a requirement that TLU account to the TCEQ semi-annual on the status of the refunds due to customers and the status of any surcharge collected to cover rate case expenses. Protestant totally disagrees with TLU as to the line loss issue and their gratuitous statement supporting the ALJ on the rate case expenses.

EXECUTIVE DIRECTORS EXECEPTIONS

6. The ED still continues to recommend that an extra $8756.00 be added to the rate case expenses that were recommended of $52,000.00 (page 7) because of expenses incurred by TLU in "...responding to issues that are not normally part of a rate proceeding." As was pointed out in the Protestant's closing arguments and in the Exceptions to the PFD, the

reasoning by the ED on this issue is very circumspect. The main two issues raised were notice and the fact that TLU violated TCEQ orders and over collected tens of thousands of dollars in excess of what was allowed from its customers and then hid the fact in discovery until just before the initial hearing was to start. The Protestant was forced into the position of filing additional testimony based on the newly discovered information.

7. The ED states that the issue of the violation of TCEQ Orders and over collection of tens of thousands of dollars from customers is not normally part of a rate case. Hopefully most utilities are following and not violating Commission orders, but to penalize the Protestants because it was discovered in the middle of a proceeding is just not right. The ED's Exceptions on page 14 through 16 gives an excellent analysis of what the term in the public interest means when determining the appropriate amount of recoverable rate case expenses. It is never addressed in this section as to how it is in the public interest to allow a utility to collect additional rate case expenses above what the ED concludes is reasonable, necessary and in the public interest. It is in fact, against the public interest. If the Protestant had not raised the issue but waited for an enforcement action as suggested by the ED, the books of TLU would have been incorrect and an improper rate would have been determined in this case. Then during the enforcement action, the rates would have had to be re-determined. The TCEQ should not reward TLU, and penalize the customers, by granting TLU extra rate case expenses to cover costs of an issue that they created. It is simply not fair, not in the public interest and will not encourage other utilities to follow lawful issued orders of this Commission.

8. The witness for the ED at the hearing on remand agreed on cross that TLU had violated orders of the TCEQ and had over collected money from rate payers both times in the past that a surcharge was allowed to be collected from the customers. The witness also agreed

that it would be wise based on the past actions of TLU to include in an order in this proceeding a provision requiring an periodic accounting be provided by TLU similar to that contained in orders presented as exhibits by the ED. While agreeing that it would be wise to require such a provision, the ED has completed ignored this issue in its closing arguments and exceptions to the PFD. The customers of TLU need assurances that the refunds due to them for over collections for the past four years are properly accounted and refunded and that any surcharge allowed to be collected is properly collected. The final order issued by TCEQ should contain provisions: 1) that TLU provide an accounting to each customer showing the overcharges, on a monthly basis, above that approved by the Commission and that requested by TLU in it application, 2) that TLU provide an semi-annual accounting to the TCEQ showing refunds owed to its customers for refunds of over charges and amounts refunded and amounts of surcharges collected to cover any rate case expenses allowed by this Commission.

TEXAS LANDING UTILITY EXCEPTIONS

9. TLU filed Exceptions to the PFD concerning the line loss issue and argued that the ED methodology as adopted by the ALJ be rejected and TLUs methodology instead be adopted. This whole argument by TLU is simply an attempt to collect higher rates from its customers and to relieve from itself any obligation to be responsible for timely repairs and water conservation. The ED insisted on modifying what was requested in TLUs application for rate design to include provisions that would encourage water conservation by the customers of TLU. The proposed rates were restructured where there was an economic incentive for the customers to use less water and not to be wasteful. The same type of provision should be applied to TLU. TLU wishes to be able, in effect, to charge its customers for water lost and not to be responsible if it does not make timely repairs. If the customers are burdened with

economic provisions to conserve water, it is only fair that TLU be burdened with similar provisions. Control of line loss is totally within the control of TLU.

Conclusion and Relief Requested

10. The PFD submitted by this ALJ should be totally rejected by the TCEQ Commissioners as it pertains to rate case expenses and date of cut off of refunds. The ALJ is obviously biased and has written a very flawed legal analysis attempting to justify recovery of the entire amount of rate case expenses by TLU. Adoption of this PFD would remove all authority from the TCEQ to determine reasonableness of rate case expenses in the future.
11. The Commission should request from the Attorney General's Office an explanation as to why an ALJ that is supposedly an unbiased trier of fact would write such a flawed and biased opinion, twisting the law to arrive at the opinion he reached.
12. The Commission should decide this matter based on the record and please do not remand this for further consideration. This case has been ongoing since September of 2007, and it will be close to 4 years before an order will be issued in this case. There is nothing left to say in this matter that has not been said several times. If the Commission does remand, a new ALJ should be demanded from SOAH. It is clear that this ALJ is simply not capable of rendering a fair and unbiased opinion.
13. Texas Landing Utilities has failed to meet its burden of proof for recovery of rate case expenses. It has failed to prove that the expenses are reasonable and necessary and in an amount customarily charged in the locality for similar legal service. The recovery of rate case expenses should be denied. Alternatively, the rate case expenses granted should be no more than those recommended by the Executive Director of $52,000. TLU should be required to give to each customer an accounting of overcharges since December 2007 and a semi-annual accounting should be required to the TCEQ showing the amounts of the

surcharges collected. The difference between the rate case expenses requested by TLU and the amount finally granted should be ordered not to be allowed to be recovered in subsequent rate cases. The method of handling line loss should be adopted as recommended by the Executive Director. Full refunds of fees collected by TLU from December of 2007 forward until the new rate schedule goes into effect should be ordered by the Commission and not discontinued as of January 2010. As has been demonstrated by the actions of TLU twice in the past when allowed to collect surcharges, the customers need protection from TLU, and the Commission is the only party that can provide that protection.

Respectfully submitted,

Bill F. Bryan
Protestant
95 S. Flagstone Path Circle
The Woodlands, TX 77381
281.466.2438

In Concurrence:

John Stacey
Protestant
154 Buffalo Ct.
Livingston, TX 77351
936.566.5994

David Veinotte
Protestant
174 Buffalo Ct.
Livingston, TX 77351
936.566.5566

Certificate of Service

I hereby certify that on June 17, 2011, a true and complete copy of the foregoing was sent to the following by facsimile, first-class mail, email or e-filing:

Parties	Representative/Address	Service
State Office of Administrative Hearings	Judge Paul Keeper 300 West 15th Street Austin, Texas 78701	Via mail
State Office of Administrative Hearing	SOAH – Docket Clerk 300 West 15th Street Austin, Texas 78701	Via mail
TCEQ	Docket Clerk Office of the Chief Clerk P.O. Box 13087 Austin, Texas 78711	Via mail & e-filing
TCEQ Executive Director	Ron Olson, Attorney TCEQ MC-173 P.O. Box 13087 Austin, Texas 78711-3087 Ron.Olson@tceq.texas.gov	Via mail & e-mail
Office of Public Interest Counsel of TCEQ	Eli Martinez, Attorney TCEQ, OPIC MC-103 P.O. Box 13087 Austin, Texas 78711-3087 eli.martinez@tceq.texas.gov	Via mail & e-mail
Texas Landing Utilities, L.L.C.	Paul Terrill III, Attorney Geoffrey P. Kirshbaum, Attorney 810 West 10th Street Austin, Texas 78701 gkirshbaum@terrill-law.com	Via mail & e-mail

Bill F. Bryan