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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2010 APR 16 PM 3:04
CHIEF CLERKS OFFICE

SOAH DOCKET NO. 582-08-1719
TCEQ DOCKET NO. 2008-0164-UCR

APPLICATION OF HHJ, INC. DBA DECKER UTILITIES TO CHANGE TO CHANGE ITS WATER AND SEWER TARIFF IN MONTGOVERY COUNTY, TEXAS,	§ § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

HHJ, INC. DBA DECKER UTILITIES' REPLIES TO EXCEPTIONS OF THE EXECUTIVE DIRECTOR TO THE AMENDED PROPOSAL FOR DECISION

HHJ, Inc. dba Decker Utilities (HHJ) files these its Replies to the Exceptions of the Executive Director (ED) to the Amended Proposal for Decision of Administrative Law Judge Sharon Cloninger (ALJ) in the above-referenced docket. Those Exceptions were contained in a letter dated April 6, 2010.

1. Rate Case Expenses

The ALJ raised the issue of the application of TCEQ Rule 291.28(9) and whether rate case expenses could be denied if there were a written settlement offer and the final rates were equal to or less than the settlement offer. The rule would exclude any rate case expenses incurred after the offer date. The ALJ notes that there is no evidence of any written settlement offer in the record other than a reference in the ED's Closing Arguments.

Staff Attorney Erin Selvera argues that the rule can be applied even though there

is no evidence of a settlement offer in the record. She does not explain how a rule can be applied in a contested case when there is nothing in the record with which to prove the material facts required by the rule.

HHJ submits that Rule 291.28(9) cannot be applied in this case. There is no record evidence that a written offer was ever made even though the two Intervenors, the ED and the Public Interest Counsel had two evidentiary hearings during which evidence of a written settlement offer could have been tendered. Under the Administrative Procedures Act, Tex. Gov't Code §§ 2001.060, 2001.62 and 2001.081 the record created in a contested case hearing is all the agency can rely on to formulate its final order.

HHJ would note that, at the initial hearing in Houston, Intervenor Stacy McCoy-Moquin attempted to introduce oral testimony about telephone settlement offers made to the undersigned. This testimony was objected to as a violation of TRE 408 and properly excluded by the ALJ. No attempt to present evidence on a written settlement offer was ever made.

HHJ would note that Tex. Gov't Code §2001.081 provides an evidentiary basis for introducing the facts necessary to apply Rule 291.28(9) but no party attempted to use it.

HHJ further states that it chose not to introduce evidence of the additional rate

cases expenses it incurred during the remand proceeding. The ALJ's original finding of rate case expenses was deemed to be enough of a burden on customers when recovered over a two year amortization period.

2. Cost of Service and Rate Design

This case was tried and a proposal for decision issued. When presented to the TCEQ Commissioners for final adjudication, the Commission chose to remand the docket to the ALJ. The remand was ordered to allow the Applicant to give the ED additional documentary evidence on expenses and rate base. This discovery was accomplished. A second hearing with a limited scope was held.

HHJ presented testimony on the additional information presented to the ED. Staff auditor Sheresia Perryman and staff engineer Heidi Graham presented testimony on how they chose to use the additional information. HHJ submits that this was the limit of the new record.

HHJ agrees to accept the amended testimony of Ms. Perryman and Ms. Graham on the remand issues.

3. Summary

HHJ requests that final rates recommended by the ED be adopted. HHJ further

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requests to recover rate case expenses of $29,397.23 over a two year amortization period.

Respectfully submitted,

BY: _____

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ATTORNEY FOR HHJ, INC. dba DECKER UTILITIES

CERTIFICATE OF SERVICE

I, Mark Zeppa, certify that the foregoing brief was served on the following on 4-16-10 in the manner agreed to and used in this docket and required by the TCEQ rules.

_____
Mark Zeppa

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RESPONSE REQUESTED: yes ____ no ____

Re: SOAH Docket 582-08-1719
TCEQ Docket No. 2008-0164-UCR

SENDER: Mark Zeppa

HHJ, Inc dba Decker Utilities – Replies to Exceptions of the ED to the Amended PFD

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