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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 1, 2009

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 APR -1 PM 2:56
CHIEF CLERKS OFFICE

RE: HHJ, Inc., dba Decker Utilities
SOAH Docket No. 582-08-1719; TCEQ Docket No. 2008-0164-UCR

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Exceptions to the Administrative Law Judge's Proposal for Decision.

Sincerely,

A handwritten signature in black ink that reads "Christina Mann".

Christina Mann, Attorney
Public Interest Counsel

cc: Mailing List
Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. Box 13087 • AUSTIN, TEXAS 78711-3087 • 512-239-6363

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

CHIEF CLERKS OFFICE

2009 APR - 1 PM 2: 56

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

RATE/TARIFF CHANGE	§	BEFORE THE
APPLICATION OF HHJ, INC., DBA	§	TEXAS COMMISSION ON
DECKER UTILITIES	§	ENVIRONMENTAL QUALITY

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S
PROPOSAL FOR DECISION**

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (the Commission or TCEQ) and files these Exceptions to the Administrative Law Judge's Proposal for Decision (PFD) in the above styled matter:

On April 15, 2008, the State Office of Administrative Hearings (SOAH) held a preliminary hearing at the Clements Building in Austin, Texas related to the application by HHJ, Inc. dba Decker Utilities (Applicant or Decker) to increase its water and sewer rates/tariffs for its service area located in Montgomery County, Texas. Administrative Law Judge (ALJ) Sharon Cloninger conducted the evidentiary hearing on October 14, 2008 at the SOAH offices in Houston, Texas. After a continuance, the hearing was re-convened on November 6, 2008 at SOAH's offices in Austin, Texas, with Protestants participating by telephone. The proceedings were not transcribed.

ALJ Cloninger found that even though Decker was unable to validate costs beyond simple general ledger entries in multiple cost categories, Decker should still be able to claim those costs and effectively recoup the costs from the customer base.¹ Judge Cloninger concludes that disallowing unverified costs would "result in a revue requirement below Decker's

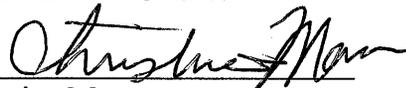
¹ See generally page 10 of the Proposal for Decision and Order issued March 12, 2009.

actual costs of service.”² OPIC recognizes this as a possibility but notes that no one can know for sure since the costs of running the system are estimates at best in some cases. In addition, OPIC notes that the Executive Director (ED) worked diligently in attempting to retrieve the information that would allow his staff to potentially support Decker’s rates. The ED conducted an on site audit and utilized the discovery process extensively in an attempt to validate the figures submitted by Decker. Yet, the ED remained unconvinced. Based upon a review of the record and the ALJ’s PFD, we reiterate our support for the ED’s original position and recommend that the Commission adopt a rate which incorporates the ED’s initial recommendations based upon the evidence presented and considered.

However, OPIC understands that the ED will be filing additional information incorporating the ALJ’s findings as requested by the ALJ on page 2 of her PFD. In order to consider the ED’s new calculations and recommendations, OPIC reserves additional formal exceptions for our reply to exceptions.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 
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² Page 10 of the Proposal for Decision and Order issued March 12, 2009.

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2009 the original plus seven of the foregoing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via electronic mail, facsimile transmission, or by deposit in interagency or U.S. Mail.


Christina Mann

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 APR - 1 PM 2: 57
CHIEF CLERKS OFFICE

MAILING LIST
HHJ, INC., DBA DECKER UTILITIES
SOAH DOCKET NO. 582-08-1719
TCEQ DOCKET NO. 2008-0164-UCR

The Honorable Sharon Cloninger
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