

**DISSENT OF COMMISSIONER KENNETH W. ANDERSON, JR.**

I would reverse the administrative law judge's proposal for decision in this case dismissing Houston's claims on the basis of *res judicata*. Although these claims arise out of a contract between Houston and AT&T, AT&T's tariff controls the billing relationship between the parties. In the context of a tariff dispute, it is inappropriate to apply *res judicata* to preclude claims of overbilling because the filed-rate doctrine mandates that a utility not charge anything more than its tariff-approved rate.

In Texas, the filed-rate doctrine is codified in PURA<sup>1</sup> § 53.004.<sup>2</sup> PURA § 53.004 provides that "[a] public utility may not directly or indirectly charge, demand or receive from a person a greater or lesser compensation for a service provided or to be provided by the utility than the compensation prescribed by the applicable tariff filed under Section 52.251."<sup>3</sup> Thus, the question before this Commission should be whether the utility violated the filed-rate doctrine by charging rates other than those approved in its tariff, not whether the utility violated its contract with the customer.

In addition, I question whether it should be this Commission's policy to require that a customer or utility litigate all claims arising out of a single service contract, which may be extended or amended over the course of a decade or longer, in a single complaint. The number of claims in this case alone suggests that over-billing can often be a continuous problem, involving disparate sections of a contract or the amendments thereto. I find that it is in the public interest to hear these types of claims, and that the filed-rate doctrine is paramount and a claim of overbilling should always be an actionable claim. Accordingly, I would not find that *res judicata* bars Houston's claims, and I respectfully dissent.

Signed at Austin, Texas the 3<sup>rd</sup> day of <sup>November</sup>~~October~~ 2016.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
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**KENNETH W. ANDERSON, JR., COMMISSIONER**

<sup>1</sup> Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016 (West 2016) (PURA).

<sup>2</sup> *Complaint of Calls for Caring, Inc. against Southwestern Bell Telephone, L.P. d/b/a AT&T Texas*, Docket No. 34348, Order on Certified Issue (Mar. 18, 2008).

<sup>3</sup> PURA § 53.004(a).