

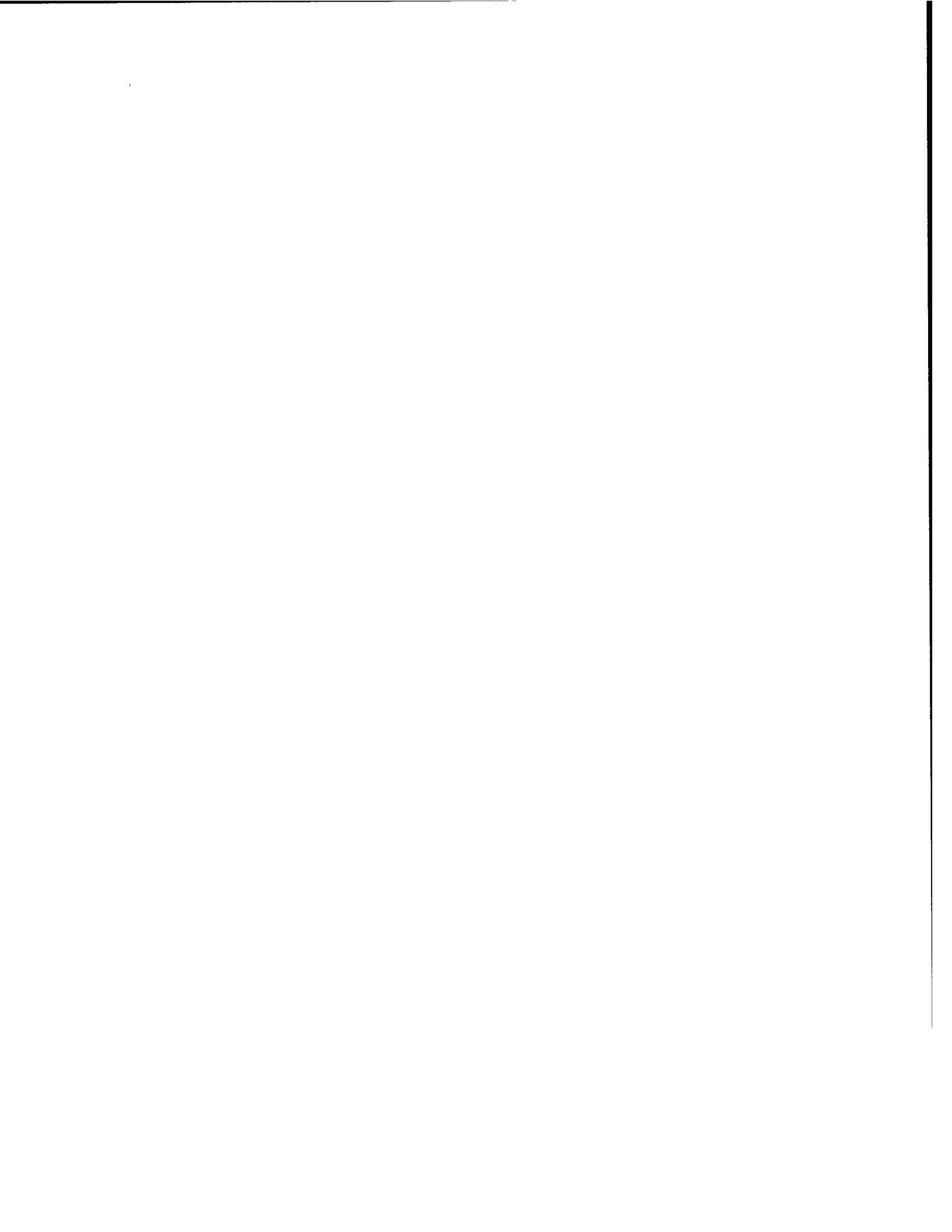


Control Number: 42860



Item Number: 15

Addendum StartPage: 0



John L. Wilson
jwilson@mcginnislaw.com
(512) 495-6015 o
(512) 505-6315 f

May 14, 2014

VIA EMAIL

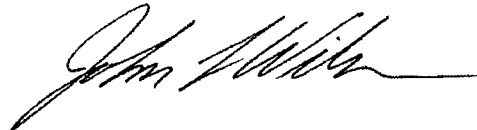
Ms. Penny Wilkov
State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, TX 78701

Re: SOAH Docket No. 582-14-1052, Douglas Utility Company

Dear Judge Penny Wilkov:

Please find enclosed Rainbow Housing Assistance Corporation's Motion to Compel Responsive Answers to Interrogatories.

Sincerely,



John L. Wilson

JLW/jlw
Enclosures

cc: Parties as identified in the certificate of service in the attached motion

RECEIVED
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FILING CLERK

SOAH DOCKET NO. 582-14-1052
TCEQ DOCKET NO. 2013-1735-UCR

APPLICATION OF DOUGLAS UTILITY § BEFORE THE STATE OFFICE
COMPANY TO CHANGE WATER AND §
SEWER RATE/TARIFF IN HARRIS § OF
COUNTY, TEXAS § ADMINISTRATIVE HEARINGS

**RAINBOW HOUSING ASSISTANCE CORPORATION'S MOTION TO COMPEL
RESPONSIVE ANSWERS TO INTERROGATORIES**

Rainbow Housing Assistance Corporation (Rainbow), by and through its attorneys and pursuant to Texas Rule of Civil Procedure 215.1, TEX. GOV'T CODE § 2001.091, 30 Texas Administrative Code § 80.151(a), and other applicable authority, hereby moves to compel Douglas Utility Company (Douglas) to fully provide responses to outstanding discovery requests submitted by Rainbow in the above captioned proceeding.

On March 26, 2014, Rainbow submitted its Second Set of Interrogatories to Douglas. A copy of that submission is attached hereto as Exhibit A. Pursuant to the discovery schedule the Administrative Law Judge adopted in this proceeding, Douglas was required to respond to the discovery requests within thirty (30) days, or on or before April 25, 2014. Douglas submitted responses that it claims to be responsive; however, as explained herein, that is not the case. A copy of Douglas' original responses are attached hereto as Exhibit B. As to the interrogatories identified below, Douglas has either refused to provide any meaningful information or provided non-responsive or vague replies. Rainbow is entitled to and needs the information sought in the discovery requests in order to develop its case and to assist in preparing prefiled testimony.

In accordance with the Order No. 1 requirement to attempt to resolve any discovery responses, Rainbow has had several telephone conferences with Mr. Mark Zeppa, Douglas'

attorney, and has exchanged several emails with him in an attempt to reach accord on the discovery disputes. No resolution has been reached.

Rainbow's attorney, John L. Wilson, contacted Mr. Zeppa, on Monday, April 28, 2014, and discussed the various discover responses that Rainbow believed were incomplete, vague, or inconsistent. Douglas responded that it would provide additional information to some of the requests, but declined to provide any additional responses/information to other requests. Not having received any additional responses, Mr. Wilson again contacted Mr. Zeppa one week later on May, 5, 2014. Mr. Zeppa indicated that on Sunday, May 4, 2014, he had just requested some additional responses from Douglas in regard to some of the discovery requests. On May 8, 2014, after still not receiving any additional responses, Mr. Wilson submitted an email to Mr. Zeppa essentially going over the same issues that had been discussed by telephone on April 28th. A copy of that email is attached hereto as Exhibit C. Finally, on May 12, 2014, Mr. Zeppa, through a series of emails provided his responses, A copy of the email responses are attached hereto as Exhibit D. Based on the email responses, it is apparent Douglas is not going to provide any additional information or meaningful responses to some of the discovery requests.

Despite the repeated efforts by Rainbow to have Douglas provide adequate responses to several of its discovery requests, that has not occurred. While Rainbow believes several of the discovery responses are inadequate, rather than bringing numerous discovery disputes to the ALJ at this time, Rainbow has decided to file this motion to compel responses in regard to just three of its interrogatories (but reserves the right to file future motions). Therefore, Rainbow files this its motion to compel in order to obtain the discover responses required in accordance with the Texas Rules of Civil Procedure.

I.
Discovery Requirements

The Texas Commission on Environmental Quality's (TCEQ) procedural rules provide that unless a judge orders otherwise, discovery shall be conducted in accordance to the Texas Rules of Civil Procedure (TRCP).¹ Likewise, the Administrative Law Judge (ALJ), Penny Wilkov, ordered that discovery would be conducted in accordance with the TRCP, as supplemented by the State Office of Administrative Hearings' (SOAH) discovery rules.²

Rule 192 of the TRCP provides a list of permissible forms of discovery that are allowed in a case. The list of allowed forms of discovery includes interrogatories to a party.

As to the limits of discovery, discovery is allowed on any matter that is relevant to the subject matter of the case and is not privileged.³ The responding party is required to provide a "complete response, based on all information reasonably available to the responding party or its attorney at the time the response is made."⁴ In fact, the rules provide that incomplete or evasive answers are considered the same as if no answer at all had been provided.⁵

In the case of inadequate responses, TRCP 215.1 provides that a party may apply for an order compelling discovery responses. Likewise, Order No. 1 provides that if discovery disputes cannot be resolved informally by the parties, they can be brought to the ALJ in a motion to compel.

II.
Information Sought in the Interrogatories

The case before the ALJ involves Douglas' request to revise the rates it charges for water and sewage services. In seeking such a rate change, the utility, Douglas, must file an Application

¹ 30 TAC §80.151(a).

² Order No. 1, 3, Feb. 3, 2014.

³ TRCP 192.3(a).

⁴ TRCP 193.1

⁵ TRCP 215.1(c).

for a Rate/Tariff Change (TCEQ-10423 Form) with the TCEQ. As required, Douglas filed an Rate/Tariff Change Application (Application), which forms the basis for Douglas' request for a rate change.

In this proceeding, Rainbow, and other parties, are challenging Douglas' request for rate change and surcharge. Thus, the Application and the basis or support for the information contained in the Application is directly related to and is very much relevant to this case. In three of its discovery requests, discussed in more detail below, Rainbow seeks to understand the information Douglas used to complete the Application and to understand when and why Douglas choose to ignore or deviate from completing the Application in accordance with TCEQ's instructions for completing a Rate/Tariff Change Application (Application Instructions).

Specifically, in Interrogatory No. 2, Rainbow asks Douglas: "Please provide the reasoning for deviating from the TCEQ's approved Rate/Tariff Change Application's (TCEQ - 10423) (referred to as the 'TCEQ's Application Form') standard service life for water and sewer utility plant, collection and distribution system as provided in Section II., GB., Table III.B., Column [C] of the Application (Page 7 for water and page 20 for sewer)." Douglas provided the following response:

The form does not clearly show the two separate 'rate bases' that must be calculated in an [Investor Owned Utility] IOU rate case - rate basis for depreciation and rate base for return. This alternative presentation was deemed to be clearer.⁶

When Rainbow informed Douglas that it did not believe the response was adequate, Douglas responded by providing:

⁶ Please note that in its Response, Douglas used all capital letter. To make this motion easier to read, the response has not been provided in all capital letters.

The answer provided adequately answers the question. Douglas has the burden of proof in filing an application to change its rates and defending that application under 30 TAC 291.25(b). The TCEQ may not constraint [sic] an applicant and dictate how the applicant shall meet its burden of proof by requiring the applicant [sic] use a pre-determined form and not allow any deviation from that form. The [sic] are no TCEQ rules, instructions or Regulatory Guidance publications that mandate absolute adherence to any TCEQ form. All of the information requested by the TCEQ form is found in the submitted application.

In Interrogatory No. 3, Rainbow requests that Douglas:

Please explain the justification for changing the fixed and variable percentages used in both the water and sewer cost allocation in Section VI., A., Table VI.A (Revenue Requirement) of the Application (page 11 for water and page 24 for sewer) from the suggested percentages provided in the TCEQ's Application Form. Provide the justification for each of the changes Douglas used from the percentages listed in the TCEQ Application for Table VI.A. As one example, Douglas uses 0% fixed for repairs and maintenance, but the TCEQ's Application Form uses 50% fixed.

Douglas' response was: "The TCEQ form does not reflect the operation of this utility."

When told its response was not adequate, Douglas provided:

There are no TCEQ rules, instructions or Regulatory Guidance publications that mandate absolute adherence to any TCEQ form. All of the information requested by the TCEQ form is found in the submitted application. The allocations in the application form are merely suggestions. The information the applicant presents in the application and must use at trial must be true and correct. This would not be true for Douglas if the suggested allocations were followed.

In Interrogatory No. 6(b)⁷, Rainbow requests that Douglas: "Other than the changes identified/discussed in response to Interrogatory No. 3 above, please identify and provide a detailed explanation of any changes Douglas took in completing the Application from those recommended by the TCEQ instructions or guidance in completing the TCEQ Application Form." Similar to its other responses, Douglas provided: "The application is completed in the customary manner to reflect the actual data possessed by [Douglas Utility Company] DUC."

⁷ Rainbow unintentionally labeled two of its interrogatories as number 6. To distinguish among the two requests, the requests will be referred to as 6(a) and 6(b), respectfully.

When challenged on the adequacy of its response Douglas provided: "The answer provided is correct for the reasons stated in the response to [Interrogatory] Int. 2 above."

In the above listed interrogatories, Rainbow has asked Douglas for relevant information related to how it filled out the Application, to explain when it deviated (or varied) from following the TCEQ's Instructions, and in such cases, explain its reasons or justification for making the variations. Instead of providing a meaningful response, Douglass basically provides that it is free to complete the Application in the manner it wants, that its method of completing the Application is clearer, or that the Application as completed by Douglas more closely reflects the utility's operations. Douglas fails to identify all the instances when it deviated from following the TCEQ's Instructions. Douglas also failed to provide any reasons for supporting its deviations other than making the conclusory statements that it's method was "deemed to be clearer" or following the TCEQ's Instructions "does not reflect the operation of this utility." Obviously, Douglas' responses are totally inadequate and fail to provide any of the requested information. The Texas Rules of Civil Procedure provide that "[a]n interrogatory may inquire whether a party makes a specific legal or factual contention and may ask the responding party to state the legal theories and to describe in general the factual bases for the party's claims" TEX. R. CIV. P. 197.1. Douglas' responses fail to provide any substantive disclosure of information and thwart the very purpose of the contention interrogatory. *See* TEX. R. CIV. P. 197.1. Accordingly, Rainbow moves to compel Douglas to provide meaningful, precise, and unqualified responses to Interrogatory Nos. 2, 3, and 6(b).

III.
Request for Relief

~~For the foregoing reasons, Rainbow Housing Assistance Corporation respectfully~~
requests that the Administrative Law Judge enter an appropriate order compelling Douglas to

fully respond to Rainbow's second of interrogatories, Numbers 2, 3, and 6(b) expeditiously, and also respectfully requests all other relief to which Rainbow may show itself entitled.

Respectfully submitted,

MCGINNIS LOCHRIDGE
600 Congress Avenue, Suite 2100
Austin, Texas 78701
(512) 495-6000
Fax (512) 495-6093

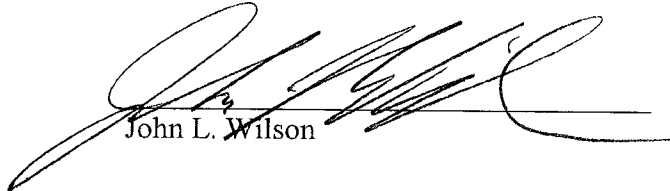
By: 

John L. Wilson (SBN 21700800)
jwilson@mcginnislaw.com
Phil Haag (SBN 08657800)
phaag@mcginnislaw.com

ATTORNEYS FOR RAINBOW HOUSING
ASSISTANCE CORPORATION

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that I engaged in reasonable efforts to resolve this discovery dispute without the necessity of the Administrative Law Judge's intervention and those efforts have failed. Specifically, I made telephone calls and sent an email to Douglas indentifying the disputed issues and requested a response. *See* attached Exhibits. The substance of the few responses received is reflected in the foregoing motion.


John L. Wilson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served as indicated below upon the following on the 14th day of May, 2014.

| | |
|--|---|
| Mark Zeppa 4833 Spicewood Springs Rd., #202 Austin, TX 78759 512 346-4011 attorney for Douglas Utility Company markzeppa@austin.rr.com mark@zeppalaw.com | Mail _____ Fax _____ E-mail <input checked="" type="checkbox"/> _____ |
| Garrett Arthur TCEQ, Office of Public Interest Counsel MC-103 P.O. Box 13807 Austin, TX 78711-3087 512-239-5757 Garrett.arthur@tceq.texas.gov | Mail _____ Fax _____ E-mail <input checked="" type="checkbox"/> _____ |
| Brian MacLeod TCEQ, MC - 173 P.O. Box 13807 Austin, TX 78711-3087 512-239-0750 Brian.macleod@tceq.texas.gov | Mail _____ Fax _____ E-mail <input checked="" type="checkbox"/> _____ |
| Karl E. Wolf Fountainview Homeowners Association 5523 Mendota lane Houston, TX 77032 713-301-7149 kwolffsr@att.net | Mail _____ Fax _____ E-mail <input checked="" type="checkbox"/> _____ |

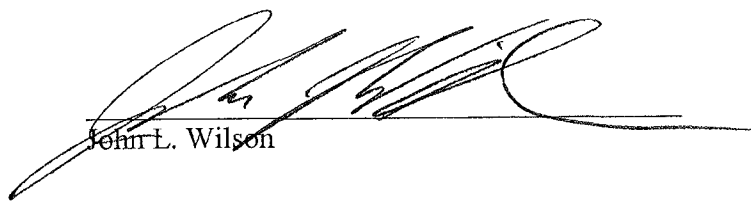

John L. Wilson

EXHIBIT A

SOAH DOCKET NO. 582-14-1052
TCEQ DOCKET NO. 2013-1735-UCR

APPLICATION OF DOUGLAS UTILITY § BEFORE THE STATE OFFICE
COMPANY TO CHANGE WATER AND §
SEWER RATE/TARIFF IN HARRIS § OF
COUNTY, TEXAS § ADMINISTRATIVE HEARINGS

RAINBOW HOUSING ASSISTANCE CORPORATION'S
SECOND REQUEST FOR PRODUCTION TO
DOUGLAS UTILITY COMPANY

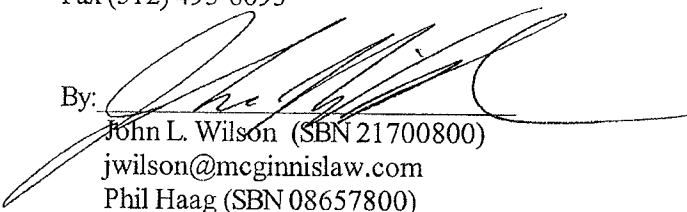
TO: Douglas Utility Company by and through its attorney of record, Mark Zeppa, 4833 Spicewood Springs Road, Suite 202, Austin, Texas 78759-8436.

Pursuant to Rule 196 of the Texas Rules of Civil Procedure, Rainbow Housing Assistance Corporation ("Rainbow") requests that Douglas Utility Company ("Douglas") produce for inspection and copying, at the offices of McGinnis Lochridge, 600 Congress Avenue, Suite 2100, Austin, Texas 78701, within thirty (30) days after service of this request, all documents and tangible things specified in the paragraphs immediately following that are in its actual or constructive possession, custody or control and that are in the actual or constructive possession, custody or control of any other person acting for or on behalf of Douglas. These requests are continuing, and require supplementation should additional information be obtained between the date of initial production and the date of the evidentiary hearing.

Respectfully submitted,

MCGINNIS LOCHRIDGE
600 Congress Avenue, Suite 2100
Austin, Texas 78701
(512) 495-6000
Fax (512) 495-6093

By:


John L. Wilson (SBN 21700800)

jwilson@mcginnislaw.com

Phil Haag (SBN 08657800)

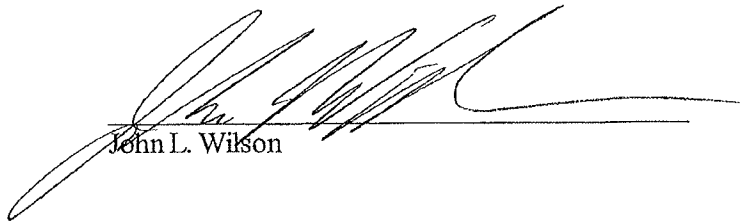
phaag@mcginnislaw.com

ATTORNEYS FOR RAINBOW HOUSING ASSISTANCE
CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served as indicated below upon the following on the 26th day of March, 2014.

| | |
|--|--|
| Mark Zeppa 4833 Spicewood Springs Rd., #202 Austin, TX 78759 512 346-4011 attorney for Douglas Utility Company markzeppa@austin.rr.com mark@zeppalaw.com | Certified Mail _____ Fax _____ E-mail <u> x </u> |
| Garrett Arthur TCEQ, Office of Public Interest Counsel MC-103 P.O. Box 13807 Austin, TX 78711-3087 512-239-5757 Garrett.arthur@tceq.texas.gov | Mail _____ Fax _____ E-mail <u> x </u> |
| Brian MacLeod TCEQ, MC - 173 P.O. Box 13807 Austin, TX 78711-3087 512-239-0750 Brian.macleod@tceq.texas.gov | Mail _____ Fax _____ E-mail <u> x </u> |
| Karl E. Wolf Fountainview Homeowners Association 5523 Mendota lane Houston, TX 77032 713-301-7149 kwolffsr@att.net | Mail _____ Fax _____ E-mail <u> x </u> |



John L. Wilson

DEFINITIONS

1. "Application" means Rate/Tariff Change Application of Douglas Utility Company, effective May 12, 2013, and all related documents and all amendments including, but not limited to, the request for a surcharge, filed by Douglas Utility Company with the Texas Commission on Environmental Quality.
2. "Customer" means any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with water and/or sewage service(s) by Douglas.
3. "Document" or "documents" means all written, reported, recorded or graphic matter within the scope of Tex. R. Civ. P. 192, however produced or reproduced, including but not limited to, all letters, telegrams, telexes, cables, telephone records and notations, audio tapes, videotapes, computer discs or tapes, computer and/or electronic mail messages or notes, photographs, film, invoices, files, ledgers, journals and other formal and informal books of record and account, minutes, bulletins, instructions, reports, memoranda, notes, notebooks, drafts, worksheets, agreements, intracorporate drafts of the foregoing items and copies or reproductions of the foregoing upon which notations in writing are not on the original.
4. "Douglas Utility Company," "Douglas," "You," and "Your" refers to Douglas Utility Company (CCNNos. 11369 and 20527) and its officers, directors, employees, agents, attorneys, consultants, contractors, trustees, shareholders, assigns, executors, administrators, servants, parent corporations, subsidiary corporations, affiliate corporations, contractors, insurers, heirs, representatives, general partners, limited partners, and all other natural persons or business or legal entities acting or purporting to act for or on behalf of Douglas Utility Company as to any matter relevant to This Matter.
5. "New or Replacement Water and/or Wastewater Treatment Facility" means all the plant and equipment of Douglas used, controlled, furnished, or supplied for, or to be constructed, purchased, acquired or otherwise used to maintain, repair and/or replace either in part or in total the Douglas water treatment facility and/or the Douglas waste water treatment facility and subject to Douglas' surcharge request as stated in Douglas in its Notice of Amendment to Proposed Rate Change that: "Douglas owns and operates a wastewater treatment plant (WWTP) that serves the Fountainview Subdivision and the Haverstock Hills Apartments. The WWTP is old and needs to be replaced" or otherwise related to Douglas Utility Company's request for a surcharge or for repairs or replacement of the current water treatment facility and/or the current waste water treatment facility.
6. "Person" shall mean the plural as well as the singular and includes: natural persons, corporations, firms, associations, partnerships, joint ventures or any other form of legal business entity; and governmental agencies, departments, units or any subdivisions thereof.
7. The term "pertaining to" means concerning, including, evidencing, mentioning, referring or relating, directly or indirectly, to the specified subject matter or any aspect or portion

thereof.

8. "Rainbow Housing Assistance Corporation," or "Rainbow" means Rainbow Housing Assistance Corporation and its attorneys, officers, employees, consultants, agents, trustees, directors, shareholders, assigns, executors, administrators, servants, parent corporations, subsidiary corporations, affiliate corporations, contractors, insurers, heirs, and any other representatives acting or purporting to act on any of their behalves as to any matter relevant to This Matter.

9. "Relate(s) to," "related to" or "relating to" shall mean constituting, compromising, identifying, referred to, reflecting, concerning, dealing with, or in any way logically or factually connected with the matters in dispute between the parties in This Matter.

10. "TCEQ" or "Commission" means the Texas Commission on Environmental Quality.

11. "Test Year" means the 12-month test year period used by Douglas in its Application to support the requested rate changes.

12. "This Matter" refers to SOAH Docket No. 582-14-1052, TCEQ Docket No. 2013-1735-UCR, before the State Office of Administrative Hearings and the related Application and proceeding(s) related to the Application and the request to approve the rate changes and surcharge requested by Douglas.

13. As used herein, the words "and" and "or" shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of these requests any document that might be deemed outside its scope by another construction.

14. The singular shall include the plural and the plural shall include the singular.

15. The past tense of a verb includes the present tense, and the present tense of the verb includes that past tense.

REQUESTS FOR PRODUCTION

1. Copies of paychecks for all employees included in cost item [A] Salaries and wages in Table VI.A. totaling \$38,882 for water and \$36,778 for sewer in Section VI. A. Revenue Requirement of the Application and copies of paychecks for these employees for the period since the beginning of the Test Year.

2. Copies of the property tax record(s) for each property included in cost item [N] Property and Other Taxes in Table VI.A. totaling \$3,186 for water and \$3,019 for sewer in Section VI. A. Revenue Requirement of the Application.

3. Copies of supporting documentation for the total number of gallons pumped, item [A] in Table VIII of Section VIII of the Application. Also, please provide supporting documentation for the total number of gallons provided to customers, item [D] in Table VIII of Section VIII of the

Application. Please breakdown the total number of gallons provided to each of the following connection types: 2", 6" and 8" as indicated in Table VII in Section VII of the Application

4. Copies of the 2012 and 2013 Water and Wastewater Utilities Annual Report for Douglas.
5. Copies of meter readings for the water use by Haverstock Hills Apartments since the meters were installed.
6. Copy of the COH Rate Comparison Report that was referenced in the Douglas Meeting Minutes for December 13, 2013, Item No. 2, which provided: "COH Rate Comparison Report - Wes presented the completed report to us. He can explain the report details at the Hearing to show the protestant's attorneys how much of a break HHA has been getting and will continue to get when compared to the rates of COH."
7. All documents related to the calibration of the water meters installed to measure water provided by Douglas to the Haverstock Hills Apartments.
8. Copies of all documents, including photographs, showing that repairs are needed for the wastewater treatment plant. This question was asked before and Douglas only provided 26 photographs; however, Douglas' Meeting Minutes for October 11, 2013, provide: "Wes mentioned he has well over 100 pictures regarding the repairs that need to be done to the WWTP."
9. All documents Douglas has obtained relating to water and/or sewer rates charged by providers other than Douglas or comparing Douglas' rates to other water and/or sewer providers.
10. All documents related to any governmental entity, including, but not limited to federal and state, that has provided funding to Douglas.
11. All documents related to any federal governmental entity or agency providing funds to Douglas for capital improvements or infrastructure.
12. All documents related to Douglas' claim or allegation that Haverstock Hills Apartments are causing a grease problem. The response to this question is not limited to, but must include all documents related to Douglas' Meeting Minutes for October 11, 2013, providing: "The grease issue is coming from the Haverstock Hill Apartment Complex. Wes mentioned in our last meeting that the Haverstock Hill apartments exceeds the allowable amount of grease and TNG will document the excess of which Wes already has pictures. Wes will work on a report or spreadsheet in which he will document all expenses made to vactor the grease."
13. Copies of the appraisals and budget referenced in the following statement contained in Douglas' March 1, 2013 Meeting Minutes: "David provided the Revised Capital Improvements Budget which was faxed to Gary Karter. Carol has sent Gary the Douglas Utility Appraisals. Carol has sent Gary the Douglas Utility Appraisals. [sic] Gary will look and see if we qualify for a CDC Loan. (Community Development Credit)".

14. All documents prepared for or received in regard to determining if Douglas could qualify for a CDC Loan as referenced in Request No. 13 above.

15. Copy of the (Water and Sewer) Collection and Distributions Improvement Budget that is referenced in Douglas' February 1, 2013, Meeting Minutes.

16. All documents prepared for or received in regard to determining if Douglas could qualify for a loan for capital improvements from the Water Development Board.

EXHIBIT B

SOAH DOCKET NO. 582-14-1052
TCEQ DOCKET NO. 2013-1735-UCR

APPLICATION OF DOUGLAS UTILITY
COMPANY, TO
CHANGE ITS WATER AND SEWER
RATES

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

DOUGLAS UTILITY COMPANY'S RESPONSES TO RAINBOW HOUSING
ASSISTANCE CORPORATION'S SECOND SET OF INTERROGATORIES

Pursuant to Texas Rule of Civil Procedure 197, Douglas Utility Company ("DUC") submits these responses to Rainbow Housing Assistance Corporation's ("Rainbow") First Set of Interrogatories.

Respectfully submitted,

By: 

Mark H. Zeppa
State Bar No. 22260100
Law Offices of Mark H. Zeppa, PC
4833 Spicewood Springs Road #202
Austin, Texas 78759-8435
(512) 346-4011, Fax (512) 346-6847
markzeppa@austin.rr.com

ATTORNEY FOR DOUGLAS UTILITY CO.

RAINBOW'S INTERROGATORIES

INTERROGATORY NO. 1:

Identify each person, (i) participating in the preparation of responses to these Interrogatories or (ii) supplying information used in such preparation. As to each person so identified, indicate the specific Interrogatories by number(s) with respect to which he or she was involved.

RESPONSE:

THE ANSWERS TO THESE INTERROGATORIES PER JOINTLY PREPARED BY CAROL ZIEBEN, OLGA SCHNUR, DAVID

WRIGHT, WESLEY WRIGHT, MEGAN SMITH (CLERICAL HELP AT TNG), AND MARK ZEPPA. RON PAYNE AND MARK ZEPPA ALONE PREPARED THE ANSWERS TO RHAC'S 2ND INTERROGATORIES NOS. 2 AND 3.

INTERROGATORY NO. 2:

Please provide the reasoning for deviating from the TCEQ's approved Rate/Tariff Change Application's (TCEQ – 10423) (referred to as the "TCEQ's Application Form") standard service life for water and sewer utility plant, collection and distribution system as provided in Section II., B., Table III.B., Column [C] of the Application (Page 7 for water and page 20 for sewer).

RESPONSE: THE FORM DOES NOT CLEARLY SHOW THE TWO SEPARATE "RATE BASES" THAT MUST BE CALCULATED IN AN IOU RATE CASE – RATE BASE FOR DEPRECIATION AND RATE BASE FOR RETURN. THIS ALTERNATIVE PRESENTATION WAS DEEMED TO BE CLEARER.

INTERROGATORY NO. 3:

Please explain the justification for changing the fixed and variable percentages used in both the water and sewer cost allocation in Section VI., A., Table VI.A. (Revenue Requirement) of the Application (page 11 for water and page 24 for sewer) from the suggested percentages provided in the TCEQ's Application Form. Provide the justification for each of the changes Douglas used from the percentages listed in the TCEQ Application for Table VI.A. As one example, Douglas uses 0% fixed for repairs and maintenance, but the TCEQ's Application Form uses 50% fixed.

RESPONSE: THE TCEQ FORM DOES NOT REFLECT THE OPERATION OF THIS UTILITY.

INTERROGATORY NO. 4:

In Section VIII, Table VIII of the Application for water, Douglas provides the total gallons of water billed to its customers during the Test Year. Please provide a monthly breakdown of the number of gallons provided to and billed during the Test Year to the 2", 6" and 8" meter connections.

RESPONSE: PLEASE SEE RESPONSE TO RHAC'S 2ND REQUEST FOR PRODUCTION #3 – PLEASE SEE EXHIBIT A

INTERROGATORY NO. 5:

Please provide a detailed explanation of why Douglas contends that Haverstock Hills Apartments is causing a grease problem. See, Douglas, October 11, 2013, Meeting Minutes, Item No. 4.b. "The grease issue is coming from the Haverstock Hill Apartment Complex. Wes mentioned in our last meeting that the Haverstock Hill apartments exceeds the allowable amount of grease and TNG will document the excess of which

Wes already has pictures.

RESPONSE: PLEASE SEE RESPONSE TO RHAC'S 2ND RFP #12 – PLEASE SEE EXHIBIT D

INTERROGATORY NO. 6a:

Please identify what is the "allowable amount of grease" for Haverstock Hills Apartments as mentioned in the quote contained in Interrogatory No. 5 above.

RESPONSE: TNG IS STILL RESEARCHING THIS INFORMATION WITH THE TCEQ. THE ALLOWABLE AMOUNT OF GREASE IS THE NORMAL LEVEL OF GREASE FOUND IN DOMESTIC SEWAGE THAT DOES NOT PUT THE WWTP OUT OF COMPLIANCE WITH ITS PERMIT. THIS IS A DESIGN CRITERIA UNDER THE CHAPTER 217 RULES AND AN INDIRECT COMPONENT OF THE TPDES.

INTERROGATORY NO. 6b:

Other than the changes identified/discussed in response to Interrogatory No. 3 above, please identify and provide a detailed explanation of any changes Douglas took in completing the Application from those recommended by the TCEQ instructions or guidance in completing the TCEQ Application Form

RESPONSE: THE APPLICATION IS COMPELTED IN THE CUSTOMARY MANNER TO REFLECT THE ACTUAL DATA POSSESSED BY DUC.

INTERROGATORY NO. 7:

Please explain in detail the "report details" of the COH Rate Comparison Report" as identified in the Douglas, December 13, 2013, Meeting Minutes. Item No. 2 "COH Rate Comparison Report – Wes presented the completed report to us. He can explain the report details at the Hearing to show the protestant's attorneys how much of a break HHA has been getting and will continue to get when compared to the rates of COH."

RESPONSE: PLEASE SEE EXHIBIT C. IN SUMMARY, HAVERSTOCK WOULD PAY \$134,873.95 MORE IF THEY RECEIVED SERVICE DIRECTLY FROM THE CITY OF HOUSTON INSTEAD OF DOUGLAS UTILITY.

INTERROGATORY NO. 8:

Please identify the Douglas affiliate that has paid Olga Schnur and explain why she was paid by a Douglas affiliate rather than by Douglas. See, Douglas' Answers to the Executive Director's First Requests for Disclosure, Interrogatories, and Requests for Production, to Douglas Utility Company, response to Interrogatory No. 2.

RESPONSE: ADP SOURCE

INTERROGATORY NO. 9:

Please explain why during the preliminary hearing Douglas said it needed both the requested rate change and surcharge and in its responses to Rainbow's First Set of Interrogatories, Interrogatory No. 7, where Douglas provides "If DUC gets all of its requested cost of service and proposed rates, it will have the cash flow to service the loan without the surcharge."

RESPONSE: DUC HAS A CERTAIN LEVEL OF CASH FLOW NEEDED TO OPERATE THE SYSTEMS AND REHAB THE WWTP. IF THE FULL REQUESTED RATE INCREASE IS GRANTED WITHOUT CHANGE, THE CASH FLOWS WILL BE ADEQUATE TO OPERATE AND SERVICE THE REHAB LOAN. IF THERE IS ANY MATERIAL REDUCTION IN THE CASH FLOWS FROM THE REQUESTED RATE CHANGE, THE SHORTFALL NEEDED TO SERVICE THE REHAB LOAN MUST COME FROM SOME WHERE. DUC IS EXERCISING ITS RIGHT UNDER WATER CODE §183(b) TO SEEK THIS MONEY FROM A CUSTOMER SURCHARGE SINCE DUC AND ITS OWNER DO NOT HAVE THE CAPITAL AND THE BANK LOANING THE MONEY NEEDS ASSURANCE OF ADEQUATE DEBT SERVICE CASH FLOW.

INTERROGATORY NO. 10:

Please identify all distributions that have been made by Douglas to Carol Zieben, Herbert Zieben or any member of the Zieben family since the beginning of the Test Year.

RESPONSE: THIS INFORMATION HAS PREVIOUSLY BEEN SUBMITTED. SEE RESPONSE TO RHAC'S 2ND REQUEST FOR PRODUCTION # 1.

INTERROGATORY NO. 11:

Please identify all payments of salary or other compensation that have been made by Douglas to Carol Zieben, Herbert Zieben, any member of the Zieben family and any employee of Douglas since the beginning of the Test Year.

RESPONSE: THIS INFORMATION HAS PREVIOUSLY BEEN SUBMITTED. ALSO SEE DUC'S RESPONSES TO ED'S 2d RFIS.

INTERROGATORY NO. 12:

Please explain in detail how Douglas measured, calculated or estimated the water usage by month for Haverstock Hills Apartments from the start of the Test Year until the time water meters were installed and became operational.

RESPONSE: SEE FOOTNOTE ON EXHIBIT A. ESTIMATED CONSUMPTION WAS FIGURED BASED ON THE WATER ACCOUNTABILITY OF 93.82%.

INTERROGATORY NO. 13:

Please identify when water meters were installed for the Haverstock Hills Apartments

and identify when those meters became fully operational.

RESPONSE: SEE EXHIBIT B. METERS WERE INSTALLED 6/27/2012

INTERROGATORY NO. 14:

Please provide a breakdown by month and meter size the amounts of water that were billed during the Test Year and a detailed explanation of how the water amounts were determined. See Application page 14, which provides that the total number of gallons billed to your customers during the test year was 75,118,887 gallons.

RESPONSE: SEE RESPONSE TO RHAC'S 2ND RFP # 3 – SEE EXHIBIT A.

INTERROGATORY NO. 15:

Please identify when the current waste water treatment plant was first placed into operation.

RESPONSE: THIS INFORMATION IS UNKNOW TO DUC AND CAROL ZIEBEN. ACCORDING TO THE HISTORY IN THE ARTICLES OF INCORPORATION THE COMPANY WAS INCORPORATED IN 1962. MR ZIEBEN REINSTATED THE CHARTER BY COURT ORDER IN 1970. IN 1970 DOUGLAS UTILITY COMPANY BEGAN ITS OPERATIONS UNDER MR. ZIEBEN AS PRESIDENT/OWNER.

INTERROGATORY NO. 16:

Please describe all efforts Douglas has used to minimize the amount of sludge generated at its waste water treatment plant since the beginning of the Test Year.

RESPONSE: TNG USES TYPICAL WWTP OPERATIONAL PROCEDURES TO MAXIMIZE THE PERCENT SOLIDS OF SLUDGE PRIOR TO HAULING. (I.E. DECANTING, WASTING, ETC.)

INTERROGATORY NO. 17:

Please identify all money or funds that Douglas has received from the federal government, a federal agency, and/or from a federal program.

RESPONSE: NONE

INTERROGATORY NO. 18:

Please identify since the start of the Test Year the days and time that Carol Zieben has visited and/or inspected the water treatment plant and/or the waste water treatment plant.

RESPONSE: MRS. ZIEBEN INSPECTS THE PLANT PROPERTIES AT LEAST ON A QUARTERLY BASIS. 4 TIMES A YEAR: MARCH, JUNE, SEPTEMBER, AND DECEMBER. SINCE THE TEST YEAR MRS. ZIEBEN HAS VISITED THE

PLANTS/PROPERTIES 11 TIMES.

INTERROGATORY NO. 19:

Please describe any major changes that have been made to the wastewater treatment plant since the last rate/tariff change application. For this question only, major change is defined as any single action, including repair, replacement or maintenance that has cost more than two thousand dollars (\$2000.00) or the taking out of service any equipment that has a new purchase value of two thousand dollars (\$2000.00) or greater.

RESPONSE: SEE RESPONSE TO ED RFP 22 - EXHIBIT E

INTERROGATORY NO. 20:

Please identify the meaning of the statement "The WWTP Permit would have to be amended since we are downsizing the tank..." that is made in 2.c. of Douglas's Meeting Minutes dated October 11, 2013. By identify, please identify the tank and permit that are mentioned, why it is being downsized, and what changes will have to be made to the referenced permit.

RESPONSE: AMENDMENT WILL BE NECESSARY IN ORDER TO INCLUDE THE NEW DESIGN OF THE FUTURE WWTP.

INTERROGATORY NO. 21:

Please explain how the amount for the surcharge request was determined. This explanation should include, but not be limited to, and explanation of the statement "Mark Zeppa needs to come up with the figure for the surcharge" found in Douglas' Meeting Minutes for September 6, 2013.

RESPONSE: MRS. ZIEBEN CONSULTED WITH MARK ZEPPA ON THE NEED FOR A RATE CHANGE TO GET THE APARTMENTS TO PAY THEIR FAIR SHARE OF THE COST OF SERVICE AND THE NEED TO FINANCE THE REHAB OF THE WWTP. DIFFERENT SOURCES OF IMPROVEMENT CAPITAL AND FINANCING OPTIONS USED BY OTHER TEXAS IOUS WERE DISCUSSED. ONE OF THESE OPTIONS WAS A CAPITAL IMPROVEMENT SURCHARGE UNDER WATER CODE §13.183(B) TO SERVICE A NON-AFFILIATE THIRD-PARTY LOAN. WITH THIS INFORMATION, MRS. ZIEBEN BEGAN TO EXPLORE MORE FUNDING SOURCES. WHEN MRS. ZIEBEN THOUGHT SHE HAD HER FINANCING LINED UP, SHE AGAIN CONSULTED WITH MR. ZEPPA AND RON PAYNE. IT WAS DECIDED TO FILE A UTILITY BASIS RATE CASE THAT COULD OPERATE THE SYSTEM AND MEET DEBT SERVICE REQUIREMENTS. IT WAS ALSO DECIDED TO ASK FOR A SURCHARGE IN CASE THE REQUESTED COST OF SERVICE WAS DECREASED FOR ANY REASON. THE RATE CHANGE NOTICE GAVE CUSTOMERS INFORMATION ABOUT THE LEVEL OF SURCHARGE THAT WOULD BE NEEDED IF THE RATE CHANGE WAS NOT GRANTED AND THE IMPROVEMENT LOAN HAD

TO BE FUNDED SOLELY THROUGH THE SURCHARGE. THIS WAS TO AVOID NOTICE ISSUES THAT COULD LIMIT THE SURCHARGE. DUC HAS ALWAYS AGREED THAT IT WOULD REDUCE THE SURCHARGE DOWNWARD AS NEEDED TO REACH THE SAME REQUIRED CASH FLOW LEVELS.

INTERROGATORY NO. 22:

During the preliminary hearing, Douglas stated that it did not know whether the wastewater treatment plant needed to be replaced or repaired and that that determination could not be made until further investigation of the condition of the plant. Please explain that position in relation to the following statement contained in Douglas' August 9, 2013 Meeting Minutes: "It was discussed that Douglas Utility does not want to do more repairs than is necessary regarding the rehab of the WWTP. Wes mentioned that it looks like we will be needing to definitely replace the sewer plant instead of just repairing it."

RESPONSE: THE STATEMENT REFERES TO TEMPORARY REPAIRS THAT WERE MADE TO SATISFY THE TCEQ INSPECTION. DOUGLAS UTILITY IS ANTICIPATING THE LARGE EXPENCE THAT WILL OCCUR DUE TO THE REHAB OF THE WWTP. THIS EXPENDITURE(S) IT COULD NOT MAKE UNDER THE REVENUE STREAM FROM THE OLD RATES IN PLACE AT THE TIME OF THE INSPECTION.

INTERROGATORY NO. 23:

Please identify and describe in detail all connections and interconnections that Douglas has with any other utilities or water lines outside of Douglas' CCN area.

RESPONSE: NONE

INTERROGATORY NO. 24:

As to the connections and interconnections identified in response to Interrogatory No. 23 above, please identify the gallons of water that have been transferred by month through those connections or interconnections since the beginning of the Test Year both as to water entering and leaving Douglas' system or infrastructure.

RESPONSE: NONE

INTERROGATORY NO. 25:

Please explain in detail the report details for the COH Rate Comparison Report and "the break HHA has been getting" as referenced in the Douglas Meeting minutes for December 13, 2013, Item No. 2, which states: "COH Rate Comparison Report – Wes presented the completed report to us. He can explain the report details at the Hearing to show the protestant's attorneys how much of a break HHA has been getting and will continue to get when compared to the rates of COH."

RESPONSE: PLEASE SEE EXHIBIT C. IN SUMMARY, HAVERSTOCK WOULD PAY \$134,873.95 MORE IF THEY RECEIVED SERVICE DIRECTLY FROM THE CITY OF HOUSTON INSTEAD OF DOUGLAS UTILITY.

INTERROGATORY NO. 26:

Please identify the water and wastewater systems other than Douglas that are operated by TNG Utility.

RESPONSE: SEE WWW.TNG-UTILITY.COM FOR COMPLETE LIST.

INTERROGATORY NO. 27:

Please identify if TNG Utility or its owners are in anyway related to or connected to Douglas and its owners.

RESPONSE: NO RELATION

INTERROGATORY NO. 28:

Please identify Gaylord Investment Company and identify if it or its owners are in anyway related to or connected to Douglas and its owners. Gaylord Investment Company was listed in the TNG Utility, Quote, Invoice # D-9113, Dated 9/24/2013, that was provided in response to Rainbow's First Request for Production No. 12.

RESPONSE: NO RELATION

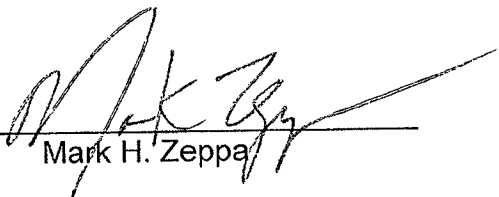
INTERROGATORY NO. 29:

Please identify if Gaylord Investment Company or its owners are in anyway related to or connected to TNG Utility.

RESPONSE: NO RELATION

CERTIFICATE OF SERVICE

I, Mark H. Zeppa, hereby certify that copies of the foregoing were provided to the parties of record as shown on the Service List below on April 25, 2014, by First Class Mail, Facsimile Transmission, hand delivery, or electronic transmission.



Mark H. Zeppa

Garrett Arthur
TCEQ
Office of Public Interest Counsel
PO Box 13087 – MC 103
Austin TX 78711-3087
(512) 239-5757, (512) 239-6377 (Fax)
Garrett.arthur@tceq.texas.gov

Brian MacLeod
TCEQ
PO Box 13087 – MC 175
Austin TX 78711-3087
(512) 239-0750, (512) 239-0606 (Fax)
bmacleod@tceq.texas.gov

John L. Wilson
McGinnis Lochridge, LLP
600 Congress Avenue, Suite 2100
Austin TX 78701
(512) 495-6015, (512) 505-6315 (Fax)
jwilson@mcginnislaw.com

Karl E. Wolfe
5523 Mendota Lane
Houston TX 77032
(713) 301-7149, (713) 301-7149 (Cell)
kwolffsr@att.net

EXHIBIT C

Wilson, John

From: JJ Smith [jjsmith1@austin.rr.com]
Sent: Thursday, May 08, 2014 2:02 PM
To: Wilson, John
Subject: RE: Douglas Utility Co.

Got it!

From: Wilson, John [mailto:jwilson@mcginnislaw.com]
Sent: Thursday, May 08, 2014 1:53 PM
To: jjsmith1@austin.rr.com
Subject: FW: Douglas Utility Co.
Importance: High

John L. Wilson

McGINNIS LOCHRIDGE
600 Congress Avenue, Suite 2100
Austin, TX 78701
o 512-495-6015 f 512-505-6315



McGINNIS LOCHRIDGE

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From: Wilson, John
Sent: Thursday, May 08, 2014 12:08 PM
To: Mark H. Zeppa (markzeppa@austin.rr.com)
Subject: FW: Douglas Utility Co.
Importance: High

I received a message that my earlier email did not go through. So I am resending.

John

From: Wilson, John
Sent: Thursday, May 08, 2014 10:50 AM
To: 'Mark Zeppa'

Subject: Douglas Utility Co.

Importance: High

Mark, I am trying to see if we can resolve some discovery response issues.

Rainbow sent you its 2nd set of requests for production and interrogatories, and on the date a response was due (April 24th). On the due date, you indicated responses would not be provided until the next day. I did not receive the responses until the next afternoon (April 25th, around 4 pm). On April 28th I called you to discuss various of Douglas' responses that I believed were inadequate. In some cases you said you had given a complete answer and no further information would be forthcoming and in other cases you said you would check and see if an additional response was warranted (i.e. provide a supplemental response). Not having heard back from you, I called you again on May 5th to discuss the discovery issues. At that time, you told me that on Sunday, May 4th you had sent an email to Douglas asking for some additional information. On May 5th, you also sent by email a copy of Douglas' unsigned response to the request for production, which I did not receive in the original responses. It is now April 8th, and I have not received any additional information/responses from you.

Below is a listing of the requests and the responses that I believe are inadequate and my understanding of Douglas' position on the adequacy of its responses. If I have incorrectly stated Douglas' position please let me know. Please also provide me the additional information that Douglas said it will provide. As you know, the responses were due on April 24th, so I think Rainbow is entitled to a timely response. I am trying in good faith to resolve these issues prior to filing a motion to compel. Thanks for your quick response.

Responses to Request for Production:

(1) In Request No. 8, I asked for "Copies of all documents, including photographs, showing that repairs are needed for the wastewater treatment plant. This question was asked before and Douglas only provided 26 photographs; however, Douglas' Meeting Minutes for October 11, 2013, provide: 'Wes mentioned he has well over 100 pictures regarding the repairs that need to be done to the WWTP.'" The response I received was "Per Wesley, no more pictures are necessary at this time." Douglas does not get to decide what photos are relevant or necessary. I ask that you produce the requested documents.

Responses to Interrogatories :

(2) Interrogatory Nos. 1, 8 and 28. In these interrogatories I ask Douglas to identify certain people and entities. While Douglas listed the names of the people or entities, Douglas did not provide the other information as required under the instructions 3 through 6 related to "identify." Additionally, the response provided to Interrogatory No. 8 seems inconsistent with the listing of the entity on the W2 form for Ms. Olga Schnur. You stated you would provide the additional information, but I have not received any additional information to date.

(3) In Interrogatory No. 2, Rainbow asked about the reasoning from deviating from the TCEQ's approved Rate/Tariff Change Application (TCEQ-10423). Douglas' response was inadequate, it merely provided "The form does not clearly show the two separate 'rate bases' that must be calculated in an IOU Rate case - Rate base for depreciation and rate base for return. This alternative presentation was deemed to be clearer." Just

saying the alternative approach does not provide Douglas' "reasoning" from deviating from the TCEQ's Application form. My understanding is that Douglas will not supplement the provided information and thinks its current response is adequate.

(4) In Interrogatory No. 3, Rainbow asks for an explanation for changing the fixed and variable percentages in the application form. Rather than providing the requested explanation, Douglas merely provides "The TCEQ does not reflect the operation of this utility." Despite the obviously inadequate response, my understanding is that Douglas will not supplement the provided information and thinks its current response is adequate.

(5) In Interrogatory No. 5, Rainbow asks for a detailed explanation of why Douglas contends that Haverstock Hills Apartments is causing a grease problem. Rather than providing an explanation, Douglas simply refers to documents that it has provided regarding a request for production regarding the grease issue. My understanding is that Douglas does not intend to supplement its response despite the fact no explanation was provided.

(6) In Interrogatory No. 6 (first one), Rainbow asks about what is the "allowable amount of grease" as that phrase was used in Douglas' Meeting Minutes. Rather than provide an answer, Douglas provides that it is still researching the issue. My understanding is that Douglas does not intend to supplement its response.

(7) In Interrogatory No. 6 (second one), Rainbow asks Douglas to identify and provide a detailed explanation of any changes Douglas took in completing the Application form. Douglas responded: "The Application is completed in the customary manner to reflect the actual data possessed by DUC." Douglas' response does respond to the Interrogatory. My understanding is that Douglas does not intend to supplement its response.

(8) In Interrogatory No. 20, Rainbow asked Douglas to "identify the [referenced] tank and permit that are mentioned, why it is being downsized, and what changes will have to be made to the referenced permit." Douglas' response was "Amendment will be necessary in order to include the new design of the future WWTP." The response is inadequate because it does not identify the tank, does not identify the permit, and does not identify the changes will be made to the permit. My understanding is that Douglas will supplement its response, but as of today, no further information has been provided.

(9) In Interrogatory No. 21, Rainbow asks how the amount of the requested surcharge was determined. While Douglas provides a "response" it does not state how the amount was determined just the overall process used to decide to request a surcharge. My understanding is that Douglas thinks its response is adequate and will not provide any additional information.

(10) In Interrogatory No. 22, Rainbow refers to a statement made in Douglas meeting minutes that "We mentioned that it looks like we will be needing to definitely replace the sewer plant instead of just repairing it." and asks for an explanation of that position. Rather than responding to the Interrogatory, Douglas provides that the statement refers to temporary repairs, when clearly that is not the case. My understanding is that Douglas thinks its response is adequate and will not provide any additional information.

(11) In Interrogatory Nos. 23 and 14, Rainbow asks about connections and interconnections. Douglas responded that there were no interconnections; however as discussed with you, that is inconsistent with documents provided by Douglas referring to an interconnection. My understanding is that Douglas will

EXHIBIT D

Wilson, John

From: Mark Zeppa [markzeppa@austin.rr.com]
Sent: Monday, May 12, 2014 10:19 AM
To: Wilson, John
Subject: RE: Douglas Utility Co.

Douglas' responses to your points is stated following each one.

Mark H. Zeppa
Law Offices of Mark H. Zeppa, PC
Independent Water & Sewer Companies of Texas
4833 Spicewood Springs Road, Suite 202
Austin, Texas 78759
(512) 346-4011, Fax (512) 346-6847
Cell (512) 289-4599
markzeppa@austin.rr.com or IWSCOT@austin.rr.com

From: Wilson, John [mailto:jwilson@mcginnislaw.com]
Sent: Thursday, May 08, 2014 10:50 AM
To: Mark Zeppa
Subject: Douglas Utility Co.
Importance: High

Mark, I am trying to see if we can resolve some discovery response issues.

Rainbow sent you its 2nd set of requests for production and interrogatories, and on the date a response was due (April 24th). On the due date, you indicated responses would not be provided until the next day. I did not receive the responses until the next afternoon (April 25th, around 4 pm). On April 28th I called you to discuss various of Douglas' responses that I believed were inadequate. In some cases you said you had given a complete answer and no further information would be forthcoming and in other cases you said you would check and see if an additional response was warranted (i.e. provide a supplemental response). Not having heard back from you, I called you again on May 5th to discuss the discovery issues. At that time, you told me that on Sunday, May 4th you had sent an email to Douglas asking for some additional information. On May 5th, you also sent by email a copy of Douglas' unsigned response to the request for production, which I did not receive in the original responses. It is now April 8th, and I have not received any additional information/responses from you.

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Douglas: Carol Zieben has advised me that you have been provided with the photos Douglas has at this time.

Responses to Interrogatories :

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Douglas: Int. 1. The requested individuals were listed in the answer to Interrogatory 1. Each had been "identified" as to address, phone, etc. in Douglas' answers to the Executive Director's Requests for Disclosure. The exception was Megan Smith who was identified as clerical help at TNG. TNG's information had been provided.

Int. 8. The information provided has proven to be incorrect. During the test year Olga Schnur was paid by Carol Zieben through affiliate real estate company, Village Green Parks, Inc., whose contact information is the same as Douglas. Carol Zieben has advised me that this was done due to cash flow constraints of Douglas. She decided to pay Olga from another source until Douglas could improve its cash flow.

Int. 28. Gaylord Investment Company, _____

(3) In Interrogatory No. 2, Rainbow asked about the reasoning from deviating from the TCEQ's approved Rate/Tariff Change Application (TCEQ-10423). Douglas' response was inadequate, it merely provided "The form does not clearly show the two separate 'rate bases' that must be calculated in an IOU Rate case - Rate base for depreciation and rate base for return. This alternative presentation was deemed to be clearer." Just saying the alternative approach does not provide Douglas' "reasoning" from deviating from the TCEQ's Application form. My understanding is that Douglas will not supplement the provided information and thinks its current response is adequate.

Douglas: The answer provided adequately answers the question. Douglas has the burden of proof in filing an application to change its rates and defending that application under 30 TAC

(4) In Interrogatory No. 3, Rainbow asks for an explanation for changing the fixed and variable percentages in the application form. Rather than providing the requested explanation, Douglas merely provides "The TCEQ does not reflect the operation of this utility." Despite the obviously inadequate response, my understanding is that Douglas will not supplement the provided information and thinks its current response is adequate.

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John L. Wilson

McGINNIS LOCHRIDGE
600 Congress Avenue, Suite 2100
Austin, TX 78701
o 512-495-6015 f 512-505-6315



MCGINNIS LOCHRIDGE

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Wilson, John

From: Mark Zeppa [markzeppa@austin.rr.com]
Sent: Monday, May 12, 2014 11:03 AM
To: Wilson, John
Cc: Carol Zieben
Subject: FW: Douglas Utility Co.

Hit the wrong combination of keys and accidentally mailed this before it was finished. Here it is again.

Mark H. Zeppa
Law Offices of Mark H. Zeppa, PC
Independent Water & Sewer Companies of Texas
4833 Spicewood Springs Road, Suite 202
Austin, Texas 78759
(512) 346-4011, Fax (512) 346-6847
Cell (512) 289-4599
markzeppa@austin.rr.com or IWSCOT@austin.rr.com

From: Mark Zeppa [mailto:markzeppa@austin.rr.com]
Sent: Monday, May 12, 2014 10:19 AM
To: 'Wilson, John'
Subject: RE: Douglas Utility Co.

Douglas' responses to your points is stated following each one.

Mark H. Zeppa
Law Offices of Mark H. Zeppa, PC
Independent Water & Sewer Companies of Texas
4833 Spicewood Springs Road, Suite 202
Austin, Texas 78759
(512) 346-4011, Fax (512) 346-6847
Cell (512) 289-4599
markzeppa@austin.rr.com or IWSCOT@austin.rr.com

From: Wilson, John [mailto:jwilson@mcginnislaw.com]
Sent: Thursday, May 08, 2014 10:50 AM
To: Mark Zeppa
Subject: Douglas Utility Co.
Importance: High

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Douglas: Carol Zieben has advised me that you have been provided with the photos Douglas has at this time.

Responses to Interrogatories :

(2) Interrogatory Nos. 1, 8 and 28. In these interrogatories I ask Douglas to identify certain people and entities. While Douglas listed the names of the people or entities, Douglas did not provide the other information as required under the instructions 3 through 6 related to "identify." Additionally, the response provided to Interrogatory No. 8 seems inconsistent with the listing of the entity on the W2 form for Ms. Olga Schnur. You stated you would provide the additional information, but I have not received any additional information to date.

Douglas: Int. 1. The requested individuals were listed in the answer to Interrogatory 1. Each had been "identified" as to address, phone, etc. in Douglas' answers to the Executive Director's Requests for Disclosure. The exception was Megan Smith who was identified as clerical help at TNG. TNG's information had been provided.

Int. 8. The information provided has proven to be incorrect. During the test year Olga Schnur was paid by Carol Zieben through affiliate real estate company, Village Green Parks, Inc., whose contact information is the same as Douglas. Carol Zieben has advised me that this was done due to cash flow constraints of Douglas. She decided to pay Olga from another source until Douglas could improve its cash flow.

Int. 28. Gaylord Investment Company, the address I had turns out to no longer be valid. TNG is getting me up to date information.

(3) In Interrogatory No. 2, Rainbow asked about the reasoning from deviating from the TCEQ's approved Rate/Tariff Change Application (TCEQ-10423). Douglas' response was inadequate, it merely provided "The form does not clearly show the two separate 'rate bases' that must be calculated in an IOU Rate case - Rate base for depreciation and rate base for return. This alternative presentation was deemed to be clearer." Just saying the alternative approach does not provide Douglas' "reasoning" from deviating from the TCEQ's Application form. My understanding is that Douglas will not supplement the provided information and thinks its current response is adequate.

Douglas: The answer provided adequately answers the question. Douglas has the burden of proof in filing an application to change its rates and defending that application under 30 TAC 291.25(b). The TCEQ may not constraint an applicant and dictate how the applicant shall meet its burden of proof by requiring the applicant use a pre-determined form and not allow any deviation from that form. There are no TCEQ rules, instructions or Regulatory Guidance publications that mandate absolute adherence to any TCEQ form. All of the information requested by the TCEQ form is found in the submitted application.

(4) In Interrogatory No. 3, Rainbow asks for an explanation for changing the fixed and variable percentages in the application form. Rather than providing the requested explanation, Douglas merely provides "The TCEQ does not reflect the operation of this utility." Despite the obviously inadequate response, my understanding is that Douglas will not supplement the provided information and thinks its current response is adequate.

Douglas: There are no TCEQ rules, instructions or Regulatory Guidance publications that mandate absolute adherence to any TCEQ form. All of the information requested by the TCEQ form is found in the submitted application. The allocations in the application form are merely suggestions. The information the applicant presents in the application and must use at trial must be true and correct. This would not be true for Douglas if the suggested allocations were followed.

(5) In Interrogatory No. 5, Rainbow asks for a detailed explanation of why Douglas contends that Haverstock Hills Apartments is causing a grease problem. Rather than providing an explanation, Douglas simply refers to documents that it has provided regarding a request for production regarding the grease issue. My understanding is that Douglas does not intend to supplement its response despite the fact no explanation was provided.

Douglas: The operators of the sewer system, TNG, have observed the waste flow from the apartments and how it reacts to treatment at the plant. They have determined that the grease content of this waste stream is causing a problem. All of TNG's sewer operators are TCEQ-licensed and operate the system in a manner consistent with their TCEQ-approved training. This includes evaluating the treatment process and evaluating what is impacting it.

(6) In Interrogatory No. 6 (first one), Rainbow asks about what is the "allowable amount of grease" as that phrase was used in Douglas' Meeting Minutes. Rather than provide an answer, Douglas provides that it is still researching the issue. My understanding is that Douglas does not intend to supplement its response.

Douglas: Douglas has no supplement at this time.

(7) In Interrogatory No. 6 (second one), Rainbow asks Douglas to identify and provide a detailed explanation of any changes Douglas took in completing the Application form. Douglas responded: "The Application is completed in the customary manner to reflect the actual data possessed by DUC." Douglas' response does respond to the Interrogatory. My understanding is that Douglas does not intend to supplement its response.

Douglas: The answer provided is correct for the reasons stated in the response to Int. 2 above.

(8) In Interrogatory No. 20, Rainbow asked Douglas to "identify the [referenced] tank and permit that are mentioned, why it is being downsized, and what changes will have to be made to the referenced permit." Douglas' response was "Amendment will be necessary in order to include the new design of the future WWTP." The response is inadequate because it does not identify the tank, does not identify the permit, and does not identify the changes will be made to the permit. My understanding is that Douglas will supplement its response, but as of today, no further information has been provided.

Douglas: Carol Zieben has advised me that she is unaware of any specific "tank". The discussions involved the wastewater treatment plant as a whole. As has been repeatedly explained to all parties, the WWTP must be refurbished or replaced. Which option will be taken cannot be known until a temporary tank(s) are connected so the waste stream can be processed during this construction. Once this happens, Douglas will determine the extent of the construction. Merely changing out components of the plant without modifying their capacity or manner of operation should not require a permit change. If a new WWTP is installed or capacities change, a permit amendment may be required. Whether this is a major or minor permit amendment will be determined when the engineering review is finished.

(9) In Interrogatory No. 21, Rainbow asks how the amount of the requested surcharge was determined. While Douglas provides a "response" it does not state how the amount was determined just the overall process used to decide to request a surcharge. My understanding is that Douglas thinks its response is adequate and will not provide any additional information.

Douglas: The response given is adequate and answers the request. It does not need supplementation.

(10) In Interrogatory No. 22, Rainbow refers to a statement made in Douglas meeting minutes that "Wes mentioned that it looks like we will be needing to definitely replace the sewer plant instead of just repairing it." and asks for an explanation of that position. Rather than responding to the Interrogatory, Douglas provides that the statement refers to temporary repairs, when clearly that is not the case. My understanding is that Douglas thinks its response is adequate and will not provide any additional information.

Douglas: See answer provided to Int. 20 above. The response is adequate based on information known at this time.

(11) In Interrogatory Nos. 23 and 14, Rainbow asks about connections and interconnections. Douglas responded that there were no interconnections; however as discussed with you, that is inconsistent with documents provided by Douglas referring to an interconnection. My understanding is that Douglas will

Douglas: There have never been any interconnections between Douglas' systems and a neighboring utility. The references to interconnections refer to the configurations of the Douglas water plants and how they feed the apartments and single family residences. The way water was produced and sent to these two distinct service areas changed over time as a second water plant was constructed and the apartments grew.

John L. Wilson

McGINNIS LOCHRIDGE

600 Congress Avenue, Suite 2100
Austin, TX 78701
o 512-495-6015 f 512-505-6315



McGINNIS LOCHRIDGE

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Wilson, John

From: Mark Zeppa [markzeppa@austin.rr.com]
Sent: Monday, May 12, 2014 11:15 AM
To: Wilson, John
Subject: Re: Douglas Utility Co.

Accidentally sent before I was ready. A complete answer has followed.

Mark Zeppa

O - (512) 346-4011

C - (512) 289-4599

On May 12, 2014, at 10:50 AM, "Wilson, John" <jwilson@mcginnislaw.com> wrote:

Mark, I do not see any response for numbers 4 – 11. There is an incomplete answer to No. 2, Interrogatory 28, with a yellow highlight.

John

From: Mark Zeppa [<mailto:markzeppa@austin.rr.com>]
Sent: Monday, May 12, 2014 10:19 AM
To: Wilson, John
Subject: RE: Douglas Utility Co.

Douglas' responses to your points is stated following each one.

Mark H. Zeppa
Law Offices of Mark H. Zeppa, PC
Independent Water & Sewer Companies of Texas
4833 Spicewood Springs Road, Suite 202
Austin, Texas 78759
(512) 346-4011, Fax (512) 346-6847
Cell (512) 289-4599
markzeppa@austin.rr.com or IWSCOT@austin.rr.com

From: Wilson, John [<mailto:jwilson@mcginnislaw.com>]
Sent: Thursday, May 08, 2014 10:50 AM
To: Mark Zeppa
Subject: Douglas Utility Co.
Importance: High

Mark, I am trying to see if we can resolve some discovery response issues.

Rainbow sent you its 2nd set of requests for production and interrogatories, and on the date a response was due (April 24th). On the due date, you indicated responses would not be provided until the next day. I did not receive the responses until the next afternoon (April 25th, around 4 pm). On April 28th I called you to discuss various of Douglas' responses that I believed were inadequate. In some cases you said you had given a complete answer and no further information would be forthcoming and in other cases you said you would check and see if an additional response was warranted (i.e. provide a supplemental response). Not having heard back from you, I called you again on May 5th to discuss the discovery issues. At that time, you told me that on Sunday, May 4th you had sent an email to Douglas asking for some additional information. On May 5th, you also sent by email a copy of Douglas' unsigned response to the request for production, which I did not receive in the original responses. It is now April 8th, and I have not received any additional information/responses from you.

Below is a listing of the requests and the responses that I believe are inadequate and my understanding of Douglas' position on the adequacy of its responses. If I have incorrectly stated Douglas' position please let me know. Please also provide me the additional information that Douglas said it will provide. As you know, the responses were due on April 24th, so I think Rainbow is entitled to a timely response. I am trying in good faith to resolve these issues prior to filing a motion to compel. Thanks for your quick response.

Responses to Request for Production:

(1) In Request No. 8, I asked for "Copies of all documents, including photographs, showing that repairs are needed for the wastewater treatment plant. This question was asked before and Douglas only provided 26 photographs; however, Douglas' Meeting Minutes for October 11, 2013, provide: 'Wes mentioned he has well over 100 pictures regarding the repairs that need to be done to the WWTP.'" The response I received was "Per Wesley, no more pictures are necessary at this time." Douglas does not get to decide what photos are relevant or necessary. I ask that you produce the requested documents.

Douglas: Carol Zieben has advised me that you have been provided with the photos Douglas has at this time.

Responses to Interrogatories :

(2) Interrogatory Nos. 1, 8 and 28. In these interrogatories I ask Douglas to identify certain people and entities. While Douglas listed the names of the people or entities, Douglas did not provide the other information as required under the instructions 3 through 6 related to "identify." Additionally, the response provided to Interrogatory No. 8 seems inconsistent with the listing of the entity on the W2 form for Ms. Olga Schnur. You stated you would provide the additional information, but I have not received any additional information to date.

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Int. 28. Gaylord Investment Company, _____

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Douglas: The answer provided adequately answers the question. Douglas has the burden of proof in filing an application to change its rates and defending that application under 30 TAC

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John L. Wilson

McGINNIS LOCHRIDGE

600 Congress Avenue, Suite 2100
Austin, TX 78701
o 512-495-6015 f 512-505-6315

<image001.gif>

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Wilson, John

From: Mark Zeppa [markzeppa@austin.rr.com]
Sent: Monday, May 12, 2014 11:22 AM
To: Wilson, John
Cc: Carol Zieben
Subject: Gaylord Investments contact information 5-12-14

Carl R Baker
Gaylord Investments Company
Gaylord Environmental
1183 Brittmore, Suite 100
Houston, Tx 77043
Email: carl@gaylordhou.com
Phone: 713-461-1111
Fax: 713-461-1821
Cell: 832-259-2567

Mark H. Zeppa
Law Offices of Mark H. Zeppa, PC
Independent Water & Sewer Companies of Texas
4833 Spicewood Springs Road, Suite 202
Austin, Texas 78759
(512) 346-4011, Fax (512) 346-6847
Cell (512) 289-4599
markzeppa@austin.rr.com or IWSCOT@austin.rr.com

