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PUC DOCKET NO. 42860  
SOAH DOCKET NO. 473-14-5140 WS

APPLICATION OF DOUGLAS  
UTILITY COMPANY TO  
CHANGE WATER AND SEWER  
RATE/TARIFF IN HARRIS  
COUNTY, TEXAS

§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PREFILED TESTIMONY**  
**DOUGLAS UTILITY COMPANY**

**Mark H. Zeppa**

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Prefiled testimony of Mark H. Zeppa

1 Q. Please state your name and business address for the record.

2 A. My name is Mark H. Zeppa. My address is 4833 Spicewood Springs Road,  
3 Suite 202, Austin, Texas 78759.

4

5 Q. By whom are you employed and in what capacity?

6 A. I am the president of the Law Offices of Mark H. Zeppa, PC, a small  
7 boutique law firm specializing in all aspects of water and sewer utility regulation.

8

9 Q. What is your background that would qualify you to testify in this docket?

10 A. Attached to my testimony as Zeppa Schedule A is a copy of my resume.  
11 Since June 1978, I have been involved in two to three hundred public utility  
12 contested cases, most of which were water/sewer rate or certification cases. I  
13 have participated in administrative law contested rate cases from every aspect –  
14 judge, to state's attorney, to counsel for the customers, to counsel for the utility.

15

16 Q. What is the purpose of your testimony in this cause?

17 A. I will present the utility's requested level of rate case expenses.

18

19 FIRM'S EXPENSES

20 Q. How much has your firm billed Douglas Utility Company ("DUC") to date for  
21 rate case related legal services?

22 A. \$1,267.35 through September 2013. DUC has not been billed for my  
23 appearance at the prehearing conference in Houston, pretrial discovery, my trips

Prefiled testimony of Mark H. Zeppa

1 to Houston, Spring and Conroe to meet with witnesses and develop prefiled  
2 testimony or the preparation of the testimony.

3

4 Q. Are these expenditures reasonable and necessary?

5 A. Based upon 35 years of trying water and sewer rate cases, I opine that they  
6 are. The work was needed and was done efficiently. The billing rate is more than  
7 reasonable for Austin administrative lawyers and has been approved by the TCEQ  
8 in numerous contested rate cases. The expenses are the types customarily billed  
9 to clients and were billed at cost according to an agreed fee schedule.

10

11 Q. What standards do you use in evaluating the reasonableness or necessity  
12 of rate case expenses related to legal services?

13 A. It is my belief that the standards the courts and administrative agencies I  
14 have practiced before generally follow the Texas Disciplinary Rules of Professional  
15 Conduct in awarding attorneys' fees in civil and administrative cases. For  
16 example, in *Arthur Andersen & Co. v. Perry Equip. Corp.*, the Texas Supreme  
17 Court relied on the standards listed in the Texas Disciplinary Rules of Professional  
18 Conduct:

19 . . . (1) the time and labor required, novelty and difficulty of the question  
20 presented, and the skill required to properly perform the legal service; (2) the  
21 likelihood that the acceptance of employment precluded other employment by the  
22 lawyer; (3) the fee customarily charged in the locality for similar services; (4) the  
23 amount involved and the results obtained; (5) the time limitations imposed by the  
24 client or by the circumstances; (6) the nature and length of the professional  
25 relationship with the client; (7) the experience, reputation, and ability of the  
26 lawyer performing the services; and (8) whether the fee is fixed or contingent on

Prefiled testimony of Mark H. Zeppa

1 results obtained or uncertainty of collection before the legal services have been  
2 rendered.<sup>1</sup>  
3

4 I have followed those standards in my practice and in testimony I have presented  
5 in many rate cases.  
6

7 Q. Please provide a few examples of the type of work you have performed in  
8 this case.

9 A. A few of the basic tasks that I have performed are:

- 10 a. Review of the Application and conferences with DUC's president,  
11 Ron Payne and Wesley Wright;  
12
- 13 b. Conferences with TCEQ staff regarding the Rate Application,  
14 including staff requests for information;  
15
- 16 c. Legal research;  
17
- 18 d. Conferences and correspondence with expert witnesses and  
19 consultants;  
20
- 21 e. Preparation for and attendance at hearings;  
22
- 23 f. Drafting written discovery requests to the other parties;  
24
- 25 g. Preparation and responding to written discovery requests  
26 propounded by other parties;  
27
- 28 h. Conferences with Carol Zieben regarding various rate case issues;  
29
- 30 i. Conferences and email exchanges with the attorney representing the  
31 protestants;  
32
- 33 j. Analysis of legal and factual issues to be included in prefiled  
34 testimony; and  
35
- 36 k. Editing and drafting prefiled testimony for all DUC's witnesses.  
37

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<sup>1</sup> 945 S.W.2d 812, 818 (Tex. 1997) citing TEX. DISCIPLINARY R. PROF'L CONDUCT 1,04(b),  
reprinted in TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A.

Prefiled testimony of Mark H. Zeppa

1

2 Q. Did this case present any novel or difficult issues not customarily seen in  
3 investor-owned utility rate cases? If so, please explain.

4 A. It did. The wastewater treatment plant ("WWTP") is deteriorated and needs  
5 to be refurbished or replaced. Financing this construction is a problem. After  
6 consultations with Mrs. Zieben, it was decided to request a capital improvement  
7 surcharge as permitted by the Water Code and TCEQ rules. These surcharges  
8 are uncommon and each case raises untried issues. This case is no different.  
9 This has led to a great deal of professional time being spent in application and trial  
10 preparation.

11

12 Q. Were you precluded from taking on other professional engagements in  
13 order to devote adequate time to this case?

14 A. Yes.

15

16 Q. What is the range of legal fees customarily charged in the Austin area for  
17 qualified presentation in contested rate cases?

18 A. \$200 to \$400 per billing hour depending upon the professional knowledge  
19 and experience of the attorney involved.

20

21 Q. Where is your billing rate in this range?

Prefiled testimony of Mark H. Zeppa

1 A. My current billing rate of \$300 per hour is at the mid-point. This is based  
2 upon the mix of clients I represent. Everyone is billed the same rate regardless of  
3 what type or size utility they are.

4

5 Q. Is the amount involved reflective of the fees in this case?

6 A. Yes. This is a significant rate increase for some customers and has  
7 generated opposition. I cannot speculate about the ultimate final order in this case,  
8 but it is my professional opinion that the application is justified and rate relief under  
9 Texas legal standards is warranted.

10

11 Q. Has your firm had a lengthy relationship with DUC?

12 A. Yes. The founder of DUC, Herb Zieben, would occasionally call me over  
13 the years for professional advice on matters he was dealing with. Carol Zieben  
14 has consulted with me many times in the last year on matters outside of the rate  
15 case.

16

17 Q. What is the experience, reputation, and ability of the lawyer performing  
18 the services?

19 A. As shown in my resume, I have 33 years experience in Texas water and  
20 utility law. I am a frequent lecturer on utility ratemaking and accounting. I am  
21 considered one of the premier "Water Lawyers" in this state.

22

23 Q. Is your fee fixed or contingent upon the outcome of this case?

Prefiled testimony of Mark H. Zeppa

1 A. No. My firm only bills for the professional hours spent on clients' rate cases.  
2 We only charge fixed fees on routine matters such as incorporating a new utility or  
3 acting as general counsel for a water supply corporation. I do not charge  
4 contingency fees.

5

6 Q. Do you have a professional opinion as to the reasonableness and necessity  
7 of the rate case expenses of Ron Payne, GDS and Associates and TNG? If so,  
8 please discuss.

9 A. In my opinion, they are reasonable and necessary. I have worked with Ron  
10 Payne as an accountant and a utility manager for over 30 years. I know him to be  
11 a very knowledgeable and thorough utility professional. I referred Mrs. Zieben to  
12 Ron because I thought he would be an excellent consultant for her to use. I know  
13 his professional rates to be very low. I have applied the same professional service  
14 standards discussed above in formulating this opinion.

15

16 I have worked with Charles Loy and his associates on a number of administrative  
17 and civil cases. I have known Chuck since 2001. I am familiar with the firm's billing  
18 rates and know them to be within the accepted range for experienced water utility  
19 consultants in Austin. I have applied the same professional service standards  
20 discussed above in formulating this opinion.

21

22 While I did not know Wesley Wright before this case, I have known some of TNG's  
23 principals for years and know the firm does excellent work. Most of TNG's key



Prefiled testimony of Mark H. Zeppa

1 personnel came from Hays Utilities, with which I have worked over 20 years. The  
2 TNG invoices I have reviewed have consistently appeared reasonable for the work  
3 performed.

4

5 TOTAL RATE CASE EXPENSES

6 Q. What are the total rate case expenses DUC is seeking to recover in this  
7 case?

8 A. DUC seeks to recover approximately \$80,000 in total rate case expenses.

9

10 Q. Are these exact numbers? If not, why not?

11 A. The amounts are estimates because the work to be performed to finish this  
12 case has not yet been done. It had to be estimated and the firm's customary billing  
13 rates applied to those estimates. Because rate case expense in ongoing litigation  
14 is such a moving target, DUC will provide an update to this portion of my testimony  
15 at the time of trial.

16

17 Q. What is the source of the estimates used to project rate case expenses?

18 A. They are based upon Ron Payne and my experience in trying contested  
19 water/sewer rate cases. While each case is unique, all rate cases have common  
20 statutory elements that must be addressed by the applicant. For example, I know  
21 that after DUC prefiles its direct case, I will have to review the direct cases of the  
22 other parties. Objections and replies will have to be prepared for that testimony.  
23 Consultations between parties must be undertaken. Cross examination of other

Prefiled testimony of Mark H. Zeppa

1 parties' witnesses will have to be prepared. DUC witnesses will have to be  
2 prepared for trial. A 2-3 day trial will be conducted. Four rounds of post-trial briefs  
3 will have to be written. Oral argument must be presented. The client and  
4 consultants will have to be advised on the scope and ramifications of the TCEQ's  
5 final order. A final tariff will have to be prepared. Mr. Payne and DUC will be  
6 assisting me every step of the way.

7

8 It has been my experience that less than half of the professional work associated  
9 with a rate case occurs in preparing the application and taking a contested case  
10 through the applicant's prefiling stage. Most of the work comes in preparing for  
11 trial, in trial and post-trial activities. I have no reason to believe this will not be true  
12 in this docket.

13

14 RATE SURCHARGE

15 Q. How do you proposed to collect this expenditure?

16 A. The initial cost of preparing and filing the application has been included in  
17 the cost of service used to design the proposed rates. That portion may be left in  
18 service rates and the balance as a surcharge over the current number of  
19 customers over 24 months (or until the full approved amount has been collected  
20 to account for customer growth). This surcharge should be applied to the monthly  
21 base rate and not made part of the volumetric gallonage charge.

22

Prefiled testimony of Mark H. Zeppa

1 In the alternative, all incurred and approved rate case expenses can be collected  
2 as a surcharge. If this is done, the proposed rates will need to be adjusted slightly  
3 to remove the application preparation costs embedded in the monthly base rate.

4

5 Q. Why did you select a 2 year surcharge period?

6 A. This is the period customarily approved by the TCEQ in contested rate  
7 cases.

8

9 Q. Should the rate case expense surcharge be applied to all DUC customers?  
10 If so, why?

11 A. It is my experience that the TCEQ orders the recovery of reasonable and  
12 necessary rate case expenses from all of a utility's customers regardless of who  
13 triggered the generation of those costs. I agree with this policy.

14

15 CONCLUSION

16 Q. Does this conclude your testimony?

17 A. Yes. I reserve the right to update it to reflect the time actually spent between  
18 the prefiling of my testimony and the close of the record on rate case expenses.

## **MARK H. ZEPPA**

**Law Offices of Mark H. Zeppa, PC  
4833 Spicewood Springs Road, Suite 202  
Austin, Texas 78759  
(512) 346-4011, Fax (512) 346-6847  
markzeppa@austin.rr.com**

### Education

Doctor of Jurisprudence, University of Texas School of Law, December, 1977

Bachelor of Arts with Honors, University of Texas at Austin, May, 1973

National Association of Regulatory Utility Commissioners Annual Regulatory Studies Program, August, 1978, Michigan State University

### Professional Experience

Law Offices of Mark H. Zeppa, P.C., President,  
January, 1984 to Present.

President of a private law firm specializing in public utility regulation, environmental, water and administrative law before local, state, and federal agencies, legislative lobbying, and general civil law. Frequent lecturer and expert witness on administrative, water, environmental and public utility law and regulatory policies affecting water and sewer utilities.

Public Utility Commission of Texas, Assistant Director of the Office of General Counsel, February 1, 1983 to December 16, 1983.

Public Utility Commission of Texas, Senior Staff Attorney, November 1, 1981 to January 31, 1983.

Public Utility Commission of Texas, Hearings Examiner, June 1, 1978 to October 31, 1981.

### Licensed to Practice

All courts of the State of Texas  
United States District Court, Western District of Texas  
United States District Court, Eastern District of Texas  
United States Fifth Circuit Court of Appeals  
Not certified by the Texas Board of Legal Specialization

## Lecturer and Consultant

Lecturer, consultant and expert witness on matters relating to water, environmental and public utility law, utility ratemaking, utility certification, permitting, and associated topics.

## Professional Associations

Texas Bar Association  
Public Utility Law Section  
Administrative Law Section  
Natural Resources Section

Austin Bar Association  
Administrative Law Section  
Natural Resources Section

Executive Director of the Independent Water and Sewer Companies of Texas (IWSCOT), state trade association of privately owned water and sewer utilities

IWSCOT Representative to the Texas Water Forum

Member of the Texas Rural Water Association, the Texas Water Utilities Association, the American Water Works Association and the American Water Works Association - Texas Section

Member Texas Commission on Environmental Quality Drinking Water Advisory Work Group, Water Quality Advisory Work Group and Water Rights Advisory Work Group

Member of Numerous Texas Commission on Environmental Quality Ad Hoc Work Groups and Stakeholder Panels

## Recent Publications

*WHY DO THE CITIES THINK THEY HAVE A RIGHT TO SERVE?* Texas Water Law, CLE International [October 15-16, 2001]

*EVOLUTION OF CERTIFICATION: The Conflicts Don't Go Away.* Water for Texas Future: The Legal Issues, 2nd Annual TWCA/TRWA Water Law Seminar [January 24-25, 2002]; addendum on limited issues added October 11, 2005 for presentation to TCEQ Executive Director

*CERTIFICATES OF CONVENIENCE AND NECESSITY (CCNs) and TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES)* Public Improvement District (PID) Land Development Seminar, Associate Professional Engineering and Construction, LLC [February 18, 2004]

*2005 TEXAS LEGISLATIVE SESSION UPDATE (What the Rascals did this time!)* TWUA 19<sup>th</sup> Regional Conference [June 23, 2005]

*UTILITY RATEMAKING: INVESTOR OWNED UTILITIES: Ratemaking Theory and Tricks of the Trade*, Texas Rural Water Association and Independent Water and Sewer Companies of Texas, Utility Regulations Conference [April 19, 2006]

*WHY WATER AND FIRE DON'T ALWAYS MIX*, 10<sup>th</sup> Annual Texas Fire Marshals' Conference [October 23, 2008]

*RATEMAKING FOR INVESTOR OWNED UTILITIES: Theory and Tricks*, Independent Water and Sewer Companies of Texas Winter Seminar [February 12, 2010]

*RATE SETTING: UNDERSTANDING THE BASICS FOR WATER SUPPLY CORPORATIONS AND DISTRICTS*, Texas Rural Water Association First Annual Attorneys Conference [March 24, 2010]

#### **Representative Client List**

City of Magnolia  
City of Willow Park  
MDB Interests  
Green Valley Special Utility District  
Aqua Texas, Inc. – AquaAmerica, Inc.  
Canyon Lake Water Service Company  
Monarch Utilities, LP – Southwest Water Company  
Southern Utilities Company  
South Central Water Company  
Wiedenfeld Water Works, Inc.  
Bolivar Water Supply Corporation  
Creedmoor-Maha Water Supply Corporation  
Holiday Beach Water Supply Corporation  
Sturdivant-Progress Water Supply Corporation  
The Oaks Water Supply Corporation  
Windermere Oaks Water Supply Corporation