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

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

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

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**ORDER NO. 1
ESTABLISHING PARTY STATUS; ADOPTING PROCEDURAL SCHEDULE;
AND NOTICE OF PREHEARING CONFERENCE AND
HEARING ON THE MERITS**

A preliminary hearing convened in this case on January 23, 2014, in Houston, Texas. Exhibits ED-A, ED-B, ED-C, and ED-D were admitted without objection for jurisdictional purposes, and the Administrative Law Judge (ALJ) took official notice that jurisdiction was established. The ALJ designated the following as parties:

I. PARTY STATUS

PARTY	REPRESENTATIVE
Douglas Utility Company, Applicant	Mark H. Zeppa, Attorney
Executive Director (ED), Texas Commission on Environmental Quality (TCEQ)	Brian MacLeod and Hollis Henley, Staff Attorneys, TCEQ
Office of Public Interest Counsel (OPIC)	Garrett T. Arthur, Assistant Public Interest Counsel, TCEQ
Fountainview Homeowners Association	Karl E. Wolf
Rainbow Housing Assistance Corporation	John L. Wilson and Philip S. Haag, Attorneys

II. ADOPTION OF AGREED PROCEDURAL SCHEDULE

The parties agreed on the following schedule for prehearing activities and the hearing on the merits. The agreed schedule is adopted by the ALJ and shall govern this proceeding.

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DATE	ACTIVITY
January 27, 2014	Discovery begins
April 30, 2014	Answers to written discovery due within 30 days of receipt (two rounds of discovery permitted)
May 22, 2014	Applicant prefiled testimony due
June 19, 2014	Protestants and OPIC prefiled testimony due
July 18, 2014	ED prefiled testimony due
July 25, 2014	Depositions end
July 25, 2014	Objections to prefiled testimony and dispositive motions due
August 1, 2014	Responses to objections and motions
August 6, 2014	Prehearing Conference, upon proper motion and by telephone unless live hearing requested
August 12-14, 2014	Hearing on the Merits

All dates for document filings are dates for the actual delivery. Delivery may be by facsimile or email if agreed to by the parties. The parties may agree in writing to modify the dates in the procedural schedule, with the exception of the prehearing conference and hearing on the merits, which may only be changed by order of the ALJ.

III. NOTICE OF HEARINGS

A. Notice of Final Prehearing

Notice is hereby given that a prehearing telephone conference will be held in this case at **10:00 a.m. on August 6, 2014**, if necessary, to address any pending motions or objections to prefiled testimony.

Party representatives will be contacted at the telephone numbers listed on the attached service list. Any party wishing to be called at a different telephone number must contact the Judge's assistant, Angela Pardo, at (512) 463-9726, or Angela.Pardo@soah.state.tx.us not less than 24 hours before the

prehearing conference. If a party does not answer the telephone at the designated time, the preliminary hearing will proceed without that party's participation.

B. Notice of Hearing on the Merits

The ALJ has set the hearing on the merits in Austin, Texas, as agreed by the parties. Notice is hereby given that the **hearing on the merits** will be held in this case as follows:

9:00 a.m. August 12-14, 2014
State Office of Administrative Hearings
300 W. 15th Street, 4th Floor
Austin, Texas 78701

IV. PREHEARING AND HEARING PROCEDURES

A. Discovery

Discovery shall be conducted according to the Texas Rules of Civil Procedure (TRCP), as supplemented by the State Office of Administrative Hearings' (SOAH) discovery rules. 1 Texas Admin. Code (TAC) § 155.251. The TRCP shall be interpreted consistently with chapter 80 of the TCEQ's rules, the Texas Water Code, the Texas Health and Safety Code, and the Administrative Procedure Act. 30 TAC § 80.151. Pursuant to SOAH Procedural Rule 1 TAC § 155.251(c)(2), discovery documents shall be served on the other parties, but shall not be filed with the ALJ unless such materials are the subject of a discovery dispute and only those portions relevant to the dispute shall be attached to any pertinent motion.

The parties are expected to attempt to resolve discovery disputes; however, significant disputes which cannot be resolved should be brought to the ALJ's attention in a motion to compel. Any such motion shall include a certificate of conference and a copy of any discovery correspondence necessary for an informed ruling on the dispute.

B. Prefiled Evidence

All parties must prefile their direct-case evidence in writing. The parties must file the original prefiled evidence with the TCEQ and serve one copy on the representative of every other party and a copy with the ALJ. The parties need not prefile rebuttal testimony and documents used for impeachment or rebuttal purposes.

The ALJ's copy of the prefiled evidence must also comply with the following requirements:

1. The ALJ's copy must be in a three-ring binder, or if small enough, stapled.
2. Each prefiled testimony exhibit must contain a title page, which indicates the name of the party and the volume number, if more than one volume of exhibits is needed. This information must also appear on the spine of the binder.
3. Each exhibit must be tabbed for any attached exhibits.
4. Each binder must contain an exhibit list showing the exhibit number, tab number, document title, and date of the document.

A party may not seek to introduce evidence that is not prefiled as part of a party's direct case absent a showing of good cause. The ALJ will consider good cause on a case-by-case basis upon a showing of need, the reasonableness of not having anticipated its use, and whether the other parties will be prejudiced by its late entry into the record. The party with the burden of proof is cautioned not to attempt to gain a strategic advantage by saving evidence for rebuttal that is more properly part of its direct case. A party should prefile any evidence that it may use in its direct case, although a party may later choose not to introduce every item it prefiles.

Prefiled testimony should be written in question-answer format. At the evidentiary hearing, the sponsoring party will call the witness to testify and to adopt the prefiled evidence under oath. The party will offer the prefiled evidence as an exhibit and pass the witness for cross-examination by the other parties. If a party does not wish to cross-examine a witness, that party should notify the sponsoring party so that the parties can agree to the admission of the witness' testimony without requiring the witness to come to the evidentiary hearing.

Since the purpose of pre-filing evidence is to shorten the length and minimize the cost of the hearing, the ALJ discourages non-substantive evidentiary objections to prefiled evidence that seem to have little purpose other than lengthening the hearing and leaving evidentiary gaps, *e.g.* form-of-the-question and leading-the-witness objections. The ALJ expects the parties to confer and reach agreements on ways to minimize evidentiary objections.

Each party must number every page of every prefiled document to allow for easy identification and reference. This requirement includes all pages of each exhibit.

At the beginning of the hearing on the merits, each party shall provide to the court reporter two copies of every exhibit. This will allow the court reporter to mark them and not delay the hearing. One copy will be used by the court reporter to prepare the official evidentiary record for this proceeding. The other copy will be used by the witnesses while they testify.

C. Transcript

For any proceeding set to last longer than one day, a court reporter is generally required and an ALJ may order one on his or her own motion. 30 TAC § 80.23 (b)(4). The ALJ estimates that the hearing on the merits will last longer than one day. Applicant shall arrange for and pay a court reporter to record and transcribe the hearing on the merits and deliver the original and one copy of the transcript to the ALJ and two copies to the TCEQ's Chief Clerk within two weeks after the end of the hearing. The delivered transcript shall also include electronic copies on disc in text format. When the Commission makes a final decision, the costs of the recording and transcription shall be allocated among the parties in accordance with 30 TAC § 80.23.

D. Procedural Rules, Filing Requirements, and Service Requirements

Except as otherwise provided herein, this case shall be conducted in accordance with the procedural rules of TCEQ and SOAH. 30 TAC Chapter 80 and 1 TAC Chapter 155. In the event of conflict, the TCEQ's rules apply. 1 TAC § 55.1 (d).

SOAH's Electronic Case Information System may be accessed from SOAH's website. Click the "Electronic Case Files" link at the upper right-hand corner of SOAH's home page to enter the system. The parties must **file all filings with the TCEQ and SOAH**. The TCEQ's filing instructions are located on their website. SOAH's filing procedures are located on SOAH's website at www.soah.state.tx.us. Most documents may be filed by electronic upload via SOAH's electronic filing system. To upload documents, click on the Electronic Case Files link and click again on the button that appears at the bottom of the page. Parties must first be registered with SOAH in order to file by electronic upload. Directions to register are provided on the website.

Parties may also file documents with SOAH by fax, mail, or hand delivery. SOAH's fax number is (512) 322-2061. This number should be used for all fax filings and communications relating to this proceeding.

As discussed at the hearing, SOAH has implemented service by email for orders, proposals for decision, and other case related documents **created by SOAH**. Additional information and the form to request email service can be found on the SOAH website by clicking on the "Request Service by Email" link in the Notices box.

NOTE: It is very important for the parties to be aware that SOAH's service by email only applies to SOAH-issued documents, but not to documents filed by other parties. That is, if a party signs-up for service by email with SOAH, that party is only agreeing to receive SOAH-issued documents by email. For all other filings, the filing party must still serve every other party on the service list with the filing, as required by the TCEQ's and SOAH's rules. The parties may, however, agree to serve one-another by email and this is strongly encouraged.

Parties are directed to file hard copies of prefiled testimony and exhibits. The filing of these documents in hard copy will be noted in the electronic case index, but they will not be scanned into the electronic case file. The hard copies of documents offered into evidence at the hearing will constitute the record copy.

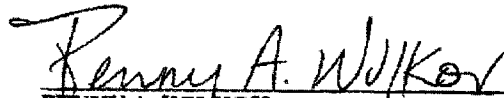
E. Order of Hearing

Unless otherwise ordered, the parties will present their cases in the following order: Applicant, Protestants, OPIC, and the ED. The Applicant will have the opportunity to introduce rebuttal evidence, which it need not prefile.

F. Procedural Questions

If a party has a procedural question, the party may contact Angela Pardo at (512) 463-9726 or angela.pardo@soah.state.tx.us.

SIGNED February 3, 2014.



PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: DOUGLAS UTILITY COMPANY
SOAH DOCKET NUMBER: 582-14-1052
REFERRING AGENCY CASE: 2013-1735-UCR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

ADMINISTRATIVE LAW JUDGE
ALJ PENNY WILKOV

REPRESENTATIVE / ADDRESS

PARTIES

MARK ZEPPA
ATTORNEY
LAW OFFICE OF MARK H ZEPPA, P C
4833 SPICEWOOD SPRINGS RD., SUITE 202
AUSTIN, TX 78759-8436
(512) 346-4011 (PH)
(512) 346-6847 (FAX)
markzeppa@austin.rr.com

DOUGLAS UTILITY COMPANY

GARRETT ARTHUR
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
P.O. BOX 13087, MC-103
AUSTIN, TX 78711-3087
(512) 239-5757 (PH)
(512) 239-6377 (FAX)
garrett.arthur@tceq.texas.gov

OFFICE OF PUBLIC INTEREST COUNSEL

BRIAN MACLEOD
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. BOX 13087, MC-175
AUSTIN, TX 78711-3087
(512) 239-0750 (PH)
(512) 239-0606 (FAX)
bmacleod@tceq.state.tx.us

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

JOHN L. WILSON
MCGINNIS LOCHRIDGE, LLP
600 CONGRESS AVENUE, SUITE 2100
AUSTIN, TX 78701
(512) 495-6015 (PH)
(512) 505-6315 (FAX)

RAINBOW HOUSING ASSISTANCE CORPORATION

KARL E. WOLFF
5523 MENDOTA LANE
HOUSTON, TX 77032
(713) 301-7149 (PH)
(713) 301-7149 (CELL)

FOUNTAINVIEW HOMEOWNERS ASSOCIATION
