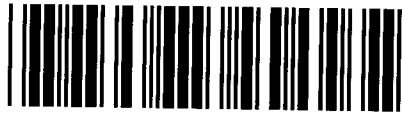




Control Number: 42860



Item Number: 9

Addendum StartPage: 0

42860

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

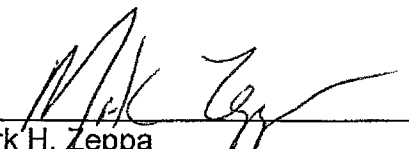
BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

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PUBLIC UTILITY COMMISSION  
CLERK

DOUGLAS UTILITY COMPANY'S ANSWERS TO THE EXECUTIVE DIRECTOR'S  
FIRST REQUESTS FOR DISCLOSURE,  
INTERROGATORIES, AND REQUESTS FOR PRODUCTION,  
TO DOUGLAS UTILITY COMPANY

Pursuant to §2001 et seq. of the Texas Government Code (the Texas Administrative Procedure Act or APA), Rules 190-198 of the Texas Rules of Civil Procedure and 30 Texas Administrative Code ("TAC") § 80.151, and 1 TAC § 155.251, Douglas Utility Company ("DUC") submits these its answers to the Executive Director's ("ED") of the Texas Commission on Environmental Quality ("TCEQ") requests for disclosure, interrogatories, requests for production and requests for admissions. The RFPs are voluminous and will be made available for inspection upon appointment as indicated.

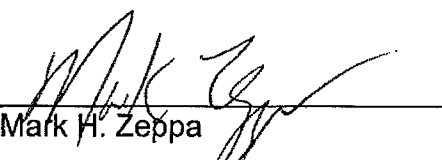
Respectfully submitted,

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.

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 February 27, 2014, by First Class Mail, Facsimile Transmission, hand delivery, or electronic transmission.

  
Mark H. Zeppa

## I. REQUEST FOR DISCLOSURE

Pursuant to Texas Rule of Civil Procedure 194, DUC states:

b. the name, address and telephone number of any potential parties;

Response: only known or potential parties are those persons or entities named "parties" by the administrative law judge at the preliminary hearing in Houston. Their representatives, other than DUC's, are listed in the following Certificate of Service.

c. the legal theories and, in general, the factual bases of the responding party's claims or defenses;

Response: To maintain the utility's financial integrity, to pay operating expenses and taxes and to finance needed capital improvements, DUC is entitled to rate relief under the standards of Water Code Chapter 13, Subchapter F and 30 TAC Chapter 291(B).

e. the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;  
Response:

Carol Zieben, president, Douglas Utility Company, 32 E Rivercrest Drive, Houston, Texas 77042-2501, (713) 783-4553 – owner and chief executive of DUC, writes and authorizes outgoing checks/payments (Accounts Payables) Also reconciles the bank statements.

Olga Schnur, Administrative Assistant, Utility Company, 32 E Rivercrest Drive, Houston, Texas 77042-2501, (713) – assistant to Carol Zieben, records the deposits into QuickBooks (Data Entry)

Ronald Payne, Rate Consultant/Water Utility Operator/Utility Operations Manager, 3606 Whidbey CT. Spring, Texas 77388, (281) 639-9358 – prepared rate change application

Chuck Loy, CPA, GDS and Associates. 919 Congress Avenue, Suite 800, Austin, Texas 78701, (512) 494-0369 performed the trend study to establish rate base

David Wright, Vice-President, Double B Operator/Master Plumber, TNG Utility Corp., 2815 Spring Cypress Rd. #3, Spring, Texas 77388, (281) 466-3971 – responsible for operations of DUC

Wes Wright, Area Manager, Double B Operator/Licensed Plumber, TNG Utility Corp., 2815 Spring Cypress Rd. #3, Spring, Texas 77388, (281) 466-3971 – responsible for operations of DUC

Jennifer Smith, Jennifer Smith, TNG Utility Corp., 2815 Spring Cypress Rd. #3, Spring, Texas 77388, (281) 466-3971 collects our customer's payment and sends them to the bank for deposit (Accounts Receivables) TNG sends out the bills to the customers.

Mark Zeppa, Attorney/Rate Consultant, Law Offices of Mark H. Zeppa, PC, 4833 Spicewood Springs Road, Suite 202, Austin, Texas 78759, (512) 346-4011 – oversaw the preparation of the rate change application and will represent DUC at trial

f. for any testifying expert:

1. the expert's name, address, and telephone number;

Response: Carol Zieben, Olga Schnur, Ron Payne, David Wright, Wes Wright, and Mark Zeppa listed above

2. the subject matter on which the expert will testify;

Response:

Carol Zieben – the history of the utility, its rate case history, communications from TCEQ on plant and operations, Cost of Service components: operating costs, taxes, depreciation, and return, existing rate structure, proposed rate structure, why a capital improvement surcharge has been requested, financial condition of DUC and affiliates, customer service, rate case expenses need and reasonableness

Olga Schnur – same general topics as Carol Zieben except rate case expenses

Ron Payne – the components of the rate change application and how the information therein was acquired from DUC and put in the application, general reasonableness and necessity of cost of service and rate design as reflective of the same items incurred by other privately owned utilities in Central and East Texas, rate case expenses.

Chuck Loy – support the trending study used by Ron Payne in the rate change application

David Wright – the operation of the DUC water and sewer systems, the state of the WWTP and the need to refurbish it, how building the WWTP will be accomplished, qualifications of the contractor, engineering and permitting, customer service and billing

Wesley Wright – same general topics as David Wright

Mark Zeppa – reasonableness and need for incurred rate case expenses, estimated expense to litigate and finish the docket.

3. the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;

Response: See rate change application and f(2) above. No definitive opinions have been formulated at this time. This will be supplements through prefiled testimony

4. if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

A. all documents, tangible things, reports, models or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony

Response: This information has been or will be provided in response to the ED's audit requests prior to the preliminary hearing, these answers to the ED's RFIs and answers to Rainbow Housing Assistance Corporation's ("Rainbow") RFIs; and

B. the expert's current resume and bibliography;

Response: Chuck Loy's and Mark Zeppa's resumes are attached. David and Wesley Wright's resume are posted on the TNG website at <http://www.tng-utility.com>. DUC does not have resumes on the other expert witnesses.

h. any discoverable settlement agreements  
Response: None

i. any discoverable witness statements.  
Response: None

## II. INTERROGATORIES

### Interrogatory No. 1.

Please explain the reasons why and how the revenue requirement and Cost of Service expenses were allocated between water and sewer utility service.

Response: Expenses were allocated on the ratio of water revenues to sewer revenues. This was determined a reasonable allocation method because DUC customers have both services.

### Interrogatory No. 2.

Please identify each individual who worked for Douglas Utility Company, either as an employee or as a contract laborer for the test year, July 1, 2011 to June 30, 2012.

Response: Carol Zeiben was paid by DUC.. Olga Schnur was paid by an affiliate to do work for DUC.

### Interrogatory No. 3.

For each individual identified in Interrogatory No. 2, please provide the following information for the test year, July 1, 2011 to June 30, 2012:

- a. the total amount paid to the individual;
- b. the number of hours per week devoted to working for Douglas Utility Company
- c. how and the reasons why the employee's salary was allocated between the water and sewer systems;
- d. the type and monthly cost of benefits such as bonus, health, life or dental insurance of each employee; and
- e. the monthly cost of group insurance and how it was allocated for employees who worked or the water and sewer systems.

Response: DUC believes this information has already been provided to and reviewed by the ED. If additional information is needed, contact Mark Zeppa.

### Interrogatory No. 4.

Please explain in detail why Douglas needs to build a New or Replacement Wastewater Treatment Facility and exactly what will be rebuilt, repaired, or replaced.

Response: The TCEQ has inspected the WWTP and has ordered DUC to repair or replace it. TNG, DUC's operator, has evaluated the condition of the plant and has determined that it has deteriorated to a point that major components (tankage) must be replaced as soon as possible to avoid a sewage leak or plant failure.

### Interrogatory No. 5.

Please explain in detail all the factors that were considered when designing the proposed

water and sewer rates, and why it is just and reasonable in regards to all customers, meter sizes, and customer classes.

Response: Customer classes, both water and sewer, are based upon the coincident peak water demand that sized water meter can put on the DUC. The customary 5/8 x 3/4-inch 10 GPM water meter has been used as the base customer class for both water and sewer rates. Differences between customer classes are a function of apply the base 5/8 x 3/4-inch monthly rate times the AWWA meter equivalency factors adopted by the TCEQ in its rate change application form. Uniform gallonage charges are applied to all customer classes regardless of meter size. They only change by the volume of water a customer consumes. Customers in different customer classes based on meter size will pay the same gallonage rate as a customer in another customer class consuming the same amount of water during the same time period. No customer is to be charged a rate that is unreasonably discriminatory or preferential to any other customer in his/her class. This methodology is routinely approved by the TCEQ in IOU rate cases and is the basic rate design presented in the TCEQ's rate change application form. It is supported by the American Water Works Association ("AWWA") M-4 Manual.

Interrogatory No. 6.

Please explain the reasons why Douglas should be allowed to collect a surcharge to fund a New or Replacement Wastewater Treatment Facility. In particular, explain why the customers should service the loan instead of having the utility service the loan for the wastewater treatment plant and then have the loan included in calculating the weighted cost of capital.

Response: DUC currently does not have the cash or cash flow to operate the utility and service the loan for the WWTP construction. If DUC gets all of its requested cost of service and proposed rates, it will have the cashflow to service the loan without the surcharge. If there is a reduction in the final approved cost of service, DUC will need the surcharge to make up the difference in the revenues needed to service the debt

Interrogatory No. 7.

Did you attempt to obtain the loan for the wastewater treatment facility and pay for the loan with your own funds without the surcharge? If so, please identify the documents involved in the application(s). Specifically, identify the application and the response to the application (either approval or refusal).

Response: See Interrogatory 6

Interrogatory No. 8.

Please state all reasons and identify all documents that reveal that the utility is not able to obtain the loan from Integrity Bank itself and explain why it is necessary to have the customers pay the debt instead?

Response: See Interrogatory 6

Interrogatory No. 9.

Please describe in detail what services are offered by Ms. Zieben that cannot be provided by your contractor (TNG) and /or employee (Olga Schnur).

Response: Mrs. Zeiben is the CEO of the utility. Only she has the power to contract with third parties, to represent the utility before regulatory bodies, and direct the daily financial operations of the utility. She works in the utility office on accounting.

Interrogatory No. 10.

List all customer or developer contributed capital (CIAC) for any assets that are included in your rate increase request calculations.

Response: Objection. The request is vague and ambiguous and cannot lead to admissible evidence at trial. Customer CIAC and developer CIAC are not the same thing under Chapter 13 of the Water Code or the TCEQ Chapter 291(b) rules. These elements of a utility's capitalization are "included in rate increase calculations" in different ways for different purposes.

Interrogatory No. 11.

Please state who originally paid for the Wastewater treatment plant in place, how much was paid, when it was placed in service, how it was depreciated when it was completed depreciated, and explain how the utility recouped the cost of the wastewater treatment plant in its previous rates.

Response: The plant was funded by the utility. It was booked as used and useful plant in service and depreciated as prescribed by law. The investment was covered through state-approved customer rates.

Interrogatory No. 12.

Please state how much longer you believe the wastewater treatment plant will be functional and provide continuous and adequate sewer service, and provide all reasons and identify all documents for that belief and identify all documents that support that belief.

Response: DUC's operators have advised Mrs. Zeiben that they believe the plant must undergo rehabilitation construction immediately because a sewage leak or plant failure is imminent. Exactly when this will occur cannot be predicted but probably in 2014.

Interrogatory No. 13.

Please provide a detailed summary of rate case expenses included in the known & measurable revenue requirement for the test year, July 1, 2011 to June 30, 2012.

Response: See Section VI(b) – water and Section VI(b) – sewer of the rate change application

Interrogatory No. 14.

Please describe the basis for the amount(s) mentioned in your application for each and every asset item(s) listed on Depreciation Schedule.

Response: Objection. The request is vague and ambiguous and cannot lead to admissible evidence at trial. "Basis" is an accounting term and relates to investment in property for tax purposes. "Basis" is not an element of a water/sewer rate case in Texas under Water Code 13.185(b). Texas is an "original Cost" state.

### III. REQUESTS FOR PRODUCTION

Request for Production No. 1. Please provide Douglas Utility Company's general ledger and financial statements for the test year, July 1, 2011 to June 30, 2012, which includes an explanation of all account codes.

Response: Information was previously provided to the ED in response to informal audit requests prior to the preliminary hearing. Copies of these documents will be made available for inspection by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.

Request for Production No. 2. Please provide all invoices and other information to support the information contained in Request for Production No. 1 above.

Response: See RFP 1.

Request for Production No... Please provide invoices or documents that support the original cost at the time of installation of all wastewater and water treatment facilities and collection and distribution systems as listed in the Application.

Response: See RFP 1.

Request for Production No. 4. Provide a copy of the trending study that was used to derive the original cost of trended assets.

Response: See RFP 1.

Request for Production No. 5. Please provide backup invoices and other information to support the information provided under Request for Production No. 3 and 4 above.

Response: See RFP 1.

Request for Production No. 6. Please provide copies of the utility's payroll taxes paid to any government agencies for 2011 and 2012. Include copies of W2's and 1099's for 2011 and 2012.

Response: Copies of these documents will be made available for inspection by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.

Request for Production No. 7. Please produce copies of applications for loans and any loan documents and agreements for the New or Replacement Wastewater Treatment Facility. Specifically, please provide all documents including but not limited to guarantees, security agreements, UCC filings, and all documents that are related to the loan between you and Integrity Bank referenced in your amendment to the application (exhibit ED E offered at the preliminary hearing).

Response: Copies of these documents will be made available for inspection by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.



Request for Production No. 8. Please provide all documents that reveal that you do not have sufficient funds to service the loan for the wastewater system referenced in your amendment to the application

Response: See rate change application. The required cost of service will not generate enough depreciation expense and return to service the loan unless the entire requested cost of service is approved without change.

Request for Production No. 9. Please provide all documents that indicate the amount of time Ms. Zieben and all other employees spend working on utility business broken down into hours per week (or as much detail as you keep records of -- e.g. timesheets) with a description of the services provided each week. Also provide all documents that reveal whether the time worked is allocable to water or sewer.

Response: Mrs. Zeiben is the only employee paid by the utility. Olga Schnur, while spending most of her time on utility business, has been paid by an affiliate entity to reduce the cash flow demands on the utility.

Request for Production No. 10. Please provide copies of the terms and conditions of any loans that Douglas Utility Company has obtained or applied for and the responses to such applications since January 1, 2009, and copies of the terms and conditions of any loans that Douglas is contemplating obtaining since January 1, 2009. Also provide all financial statements you or any person whose financial means were part of the application (including guarantors, cosigners, providers of collateral, etc.) provided in order to facilitate approval of the loan.

Response: Copies of these documents will be made available for inspection by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.

Request for Production No. 11. Please provide documents supporting the need for the surcharge requested by Douglas Utility Company.

Response: See rate change application. The required cost of service will not generate enough depreciation expense and return to service the loan unless the entire requested cost of service is approved without change.

Request for Production No. 12. Please produce documentation showing the number of gallons of water for which Douglas Utility Company has billed the customers during the test year, July 1, 2011 to June 30, 2012.

Response: Copies of these documents will be made available for inspection by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.

Request for Production No. 1a. Please provide documentation of the number of Customers served by Douglas Utility Company during the Test Year, July 1, 2011 to June 30, 2012, and the number of Customers currently being served, as well as a breakdown on the types of Customers by class of service or customer classes or meter size.

Response: See rate change application. Customer base is fairly stable with a typical rate of customer going off and/or coming onto the system.

Request for Production No. 14. Please provide documentation of the consumption levels for each meter size at each gallonage tier during the test year and documents providing the same information for expected usage for each of these categories.

Response: Copies of these documents will be made available for inspection by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011

Request for Production No. 15. Please provide documents showing the estimated costs for the new or replacement Wastewater Treatment Facility, including but not limited to the engineering, equipment, and construction costs. . In responding to this request, please provide documents that reveal the basis for the list of estimated costs as well as the summary list of estimated costs.

Response: Information was previously provided to the ED in response to informal audit requests prior to the preliminary hearing. Copies of these documents will be made available for inspection by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.

Request for Production No. 16. Please provide documentation supporting the need for the new or replacement Wastewater Treatment Facility.

Response: Information was previously provided to the ED in response to informal audit requests prior to the preliminary hearing. Copies of these documents will be made available for inspection by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.

Request for Production No. 17. Please provide all documents that reveal investigations into comparing the cost of repairing the wastewater treatment plant to the cost of replacing the wastewater treatment plant.

Response: The plan is to replace major component of the plant and to salvage and reuse those components that might still have a reasonable useful life.

Request for Production No. 18. Please provide all bids or estimates you have received for repairing or replacing the wastewater treatment plant.

Response: Information was previously provided to the ED in response to informal audit requests prior to the preliminary hearing. Copies of these documents will be made available for inspection by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.

Request for Production No. 19. Please provide all documents that relate to customer contributed capital or developer contributed capital (CIAC) for any assets that are included in your rate increase request calculations.

Response: Objection. The request is vague and ambiguous and cannot lead to admissible evidence at trial. Customer CIAC and developer CIAC are not the same

thing under Chapter 13 of the Water Code or the TCEQ Chapter 291(b) rules. These elements of a utility's capitalization are "included in rate increase calculations" in different ways for different purposes.

Request for Production No. 20. Please provide copies of construction plans, design plans and/or engineering reports for the new or replacement Wastewater Treatment Facility.

Response: These documents have not yet been produced.

Request for Production No. 21. Please provide copies of any contracts and/or work orders or other agreements (that exceed \$300) between Douglas Utility Company and the operator(s) and/or contractors used to operate, repair, and/or maintain the Wastewater Treatment Facility.

Response: Copies of these documents will be made available for inspection by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.

Request for Production No. 22. Please provide copies of reports and/or work orders or other agreements (that exceed \$300) from the operator(s) and or contractors of Douglas Utility Company related to the repair and maintenance of the Water and Wastewater Treatment Facility since the facility was dedicated to public service, especially during the test year and beyond.

Response: Objection. Request is vague and ambiguous and cannot lead to admissible evidence at trial. The Water Facility and the Wastewater Treatment Facility are not the same thing. There is no "Water and Wastewater Treatment Facility."

Request for Production No. 23. Please provide a list of names of all affiliates of Douglas Utility Company.

Response: This list will be provided for inspection and review by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.

Request for Production No. 24. Please provide all documentation to support Douglas Utility Company's request for rate change in the application and the surcharge request.

Response: Objection. Request is vague and ambiguous and cannot lead to admissible evidence at trial. DUC has previously filed its rate change application and amendment thereto. The other information DUC will rely on is not known at this time but will be identified in prefiled testimony. "All documentation" is too global a term to be responded to.

Request for Production No. 25. Please provide all contracts and invoices for services and goods between you and any person that you will be making a rate case expense claim for.

Response: These documents are not yet in DUC's custody and control. This answer will be supplemented through prefiled testimony.

Request for Production No. 26. Please provide income tax returns for the 2011 and 2012 tax years for the utility and any other person who guaranteed, cosigned, provided collateral for, or in any other way has any type of obligation relating to the loan with Integrity Bank. (Included with this request is a confidentiality agreement to protect the confidentiality of the information provided.)

Response: These returns will be provided for inspection and review by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011 after any party wishing to view them enters into a confidentiality agreement. Only the ED has done so to date.

Request for Production No. 27. Please provide a list of officers and directors of Douglas Utility Company since the company was formed.

Response: Herb Zeiben and Carol Zeiben.

Request for Production No. 28. Please provide your bank records and check register for the test year.

Response: Copies of these documents will be made available for inspection by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.

Request for Production No. 29. Please provide the corporate minutes of every meeting Douglas Utility Company has had since its inception.

Response: Objection. This request is overly broad and cannot reasonably lead to admissible evidence at trial. It is excessively burdensome on DUC. Most meeting have little or nothing to do with any relevant issue in this rate case and its test year.

Request for Production No. 30. Please provide any documents that reveal that all persons who have obligations (as a guarantor, cosigner, provider of collateral, etc.) under the loan agreement with Integrity Bank are unable to service the loan.

Response: Copies of these documents will be made available for inspection by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.

Request for Production No. 31. Please provide invoices for the rate case expenses to date which indicate the date(s) of service, the amount of time spent, a description of the work done, the hourly fee (if applicable), and the total amount billed. Please continue to supplement this request timely up to the date of trial.

Response: Objection. This request duplicates RFP 25.

Request for Production No. 32. Please provide invoices for all property taxes for Douglas Utility Company during the test period of July 1, 2011 to June 30, 2012.

Response: Copies of these documents will be made available for inspection by

appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.

Request for Production No. 33. Please provide any and all documents that support the following figures presented in your water and sewer rate/tariff change applications submitted to the TCEQ: (a) total number of gallons pumped and (b) total number of gallons billed to customers.

Response: Copies of these documents will be made available for inspection by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.

Request for Production No. 34. Please provide a copy of any and all blueprints, diagrams, or drawings of your existing water and sewer distribution system that describe size, fire hydrants, and total linear feet of pipe.

Response: Objection. Request is vague and ambiguous. There is no "sewer distribution" system since sewage is collected for treatment and not distributed to customers. The water utility documents are voluminous and are used as ongoing business records of the utility. They will be made available for inspection at DUC's offices upon appointment made through the Law Offices of Mark H. Zeppa, PC.

Request for Production No. 35. Please provide map(s) and all blueprints, diagrams, or drawings of all water and wastewater facilities currently in place for your water system.

Response: See RFP 34. There is no sewer plant in the water system.

Request for Production No. 36. Produce all invoices that support each item included in your calculations that add up to the revenue requirement you propose for your water rate increase application. The list is on page 11 of your application.

Response: Copies of these documents will be made available for inspection by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.

Request for Production No. 37. Produce all invoices that support each item included in your calculations that add up to the revenue requirement you propose for your sewer rate increase application. The list is on page 24 of your application.

Response: Copies of these documents will be made available for inspection by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.

Request for Production No. 38. Produce all documents that would reveal or estimate how much longer the wastewater treatment plant will be functional and deliver continuous and adequate sewer service.

Response: See RFP 1.

Request for Production No. 39. Please provide any correspondence from TCEQ for

construction approval of the existing water and wastewater facilities and any improvements since the original construction.

Response: See RFP 1.

Request for Production No. 40. Provide all documents that support and/or were identified in your answers to interrogatories.

Response: Copies of these documents will be made available for inspection by appointment in the Law Offices of Mark H. Zeppa, PC, (512) 346-4011.

### III. REQUESTS FOR ADMISSIONS

Request for Admission No. 1. Admit that the Utility is incapable of repaying the loan.

Response: This request is vague and ambiguous and cannot be answered "admitted" or "denied." The utility is not capable of repaying the loan, assuming the question refers to the capital improvement loan from Integrity Bank for rebuilding the WWTP, from its current cash reserves or the revenue stream from the rates in effect before this application was filed. The utility will be able to repay the loan if granted its requested rate increase, including the capital improvement surcharge.

Request for Admission No. 2. Admit that any other person who is obligated in any way (including but not limited to co-signers, guarantors, and/or providers of security or collateral) are incapable of repaying the loan.

Response: This request is vague and ambiguous and cannot be answered "admitted" or "denied." DUC does not know the identify of "any other person who is obligated in any way." Without identification of such persons or entities, the request cannot be answered.

Request for Admission No. 3. Admit that the Utility is capable of repaying the loan.

Response: See RFA 1

Request for Admission No. 4. Admit that any other person who is obligated in any way (including but not limited to co-signers, guarantors, and/or providers of security or collateral) are capable of repaying the loan.

Response: See RFA 2.

Request for Admission No. 5. Admit that if the customers pay the Integrity Bank loan through the surcharge, they will pay off the balance on the purchased assets at least five years before the expiration of the expected useful life of the asset.

Response: Admitted is the expected useful life of the assets is the 25 years printed in the TCEQ rate change application form.

Request for Admission No. 6. Admit that if the customers pay the loan through the surcharge that they will be paying for the assets purchased with the loan at a quicker rate than if they were paid for by the utility and the annual depreciation were part of the cost

of service.

Response: Admitted but once the loan paid, customers will not have to make future payments on the plant because it will not be in rate base. It will be treated as customer contributed property.

Request for Admission No. 7. Admit that the services provided by Ms. Zieben could be provided by the contractors and/or employees if Douglas Utility Company.

Response: Denied

Request for Admission No. 8. Admit that Ms. Zieben is an affiliate of Douglas Utility Company.

Response: Admitted if the definition of "affiliate" in Water Code §13.002(2) is followed.

Request for Admission No. 9. Admit that the wastewater treatment plant sought to be paid for by the surcharge cannot be constructed until the plans and specs are approved by the TCEQ.

Response: Denied

Request for Admission No. 10. Admit that no plans and specs have been provided to the TCEQ for a new wastewater treatment plant pursuant to 30 TAC § 217.1 and 217.10 or other law and regulation.

Response: Objection . The scope of the question is too broad and ambiguous. It cannot be admitted or denied without a definition of "other law and regulation."

Request for Admission No. ii. Admit that you received only one bid for the cost of putting in a new wastewater treatment plant before applying for a loan to pay for it.

Response: Admit. DUC is not a political subdivision and is not required to seek multiple bids when it already has a satisfactory contractor who will provide the construction in what the utility's management believes is a fair manner and at a reasonable price.

Request for Admission No. 12. Admit that the bid for the cost of a new wastewater treatment plant was taken from TNG.

Response: Denied, it was received by TNG for DUC.

Request for Admission No. 13. Admit that the bid attached hereto as attachment "A" is the entire and only bid you took for replacement of the wastewater treatment plant.

Response: Admit

Request for Admission No. 14. Admit that TNG is the contractor you use to operate the plant.

Response: Admit. TNG operates all DUC water and sewer plants and other facilities.

Request for Admission No. 15. Admit that TNG is an affiliate of Douglas Utility Company

Response: Denied

Request for Admission No. 16. Admit that your wastewater treatment plant is not 25 years old.

Response: Admit

Request for Admission No. 17. Admit that your wastewater treatment plant is not in need of replacement.

Response: Denied. The TCEQ has directed DUC to replace or rebuild the WWTP.

Request for Admission No. 18. Admit that the current Wastewater treatment plant is operational and functional and capable of continuing to provide continuous and adequate service.

Response: Denied.

Request for Admission No. 19. Admit that the wastewater treatment plant will continue to be operational and functional and capable of continuing to provide continuous and adequate service for at least 4 more years.

Response: Denied

Request for Admission No. 20. Admit that the documents attached to this discovery marked as attachment "B" is true and correct copies of documents on file with the Texas Secretary of State regarding your corporate status and structure.

Response: This request cannot be admitted or denied since DUC and its owner have no knowledge of what the Texas Secretary of State has on file regarding the utility's corporate status and structure. The documents identified in this request have been filed with the State of Texas by DUC in the past but if they are the sum total of all documents so filed is unknown. DUC has no knowledge of other documents that may exist that were not filed by DUC.

Request for Admission No. 21. Admit that you have completely depreciated the wastewater treatment plant in this application (there is no provision for the current wastewater treatment plant in annual depreciation or in net invested capital in this application).

Response: This request cannot be admitted or denied because the statement "(there is no provision for the current wastewater treatment plant in annual depreciation or in net invested capital in this application)" does not reflect what is stated in the application.

Request for Admission No. 22. Admit that one purpose for collecting annual depreciation



in a rate is to provide recovery of the cost of using up the purchased asset based on straight line depreciation over the service life of that asset.

Response: Admitted that this is one of many purposes for depreciation expense in utility rates. There are others, for illustration only, the accumulation of capital to fund future replacements.

## EXHIBIT CEL-1

*Charles E. Loy, CPA*  
Principal

GDS Associates, Inc.

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**EDUCATION:** BBA Accounting, University of Texas at Austin  
Certified Public Accountant, Texas

**PROFESSIONAL MEMBERSHIPS:**

American Water Works Association  
National Association of Water Companies  
Water Environment Federation  
Texas Society of Certified Professional Accountants  
American Public Gas Association  
Texas Gas Association

**EXPERIENCE:**

Mr. Loy has over 25 years' of experience helping organizations meet challenges arising in both regulated and competitive environments within in the utility industry.

2001-Present GDS Associates, Inc.: Principal – Mr. Loy started with GDS in June of 2001. His focus is on regulatory accounting and finance. He is experienced in water, wastewater, natural gas, and electric regulatory and accounting matters. Mr. Loy assisted a number of water, wastewater and gas distribution clients with rate case filings before various regulatory authorities in a number of states. He has assisted with the financial analysis of wholesale purchase power and retail aggregation projects as a result of the deregulation of the electric industry in Texas. He has conducted analysis and developed recommendations regarding the Southwest Power Administration's rate increase on behalf of member clients. He has participated in a number of natural gas and electric projects involving rate increases, acquisition analysis and special projects.

1999-2001 AquaSource Inc.: General Manager Rates and Regulatory Affairs - AquaSource Inc., a wholly owned subsidiary of DQE Inc and parent of Duquesne Light. AquaSource was formed in 1997 to take advantage of the consolidation in the water and wastewater industries and spent three years and more than \$400 million acquiring water and wastewater companies. Mr. Loy's duties included directing the compilation and filing of rate cases, acquisition analyses and related filings, regulatory commission/governmental relations in the twelve states in which AquaSource operates. Additionally, he supervised a professional staff located throughout the country and assisted in business development, developer contract negotiations and other special projects. His appointment came in the middle of AquaSource's aggressive acquisition phase. Accordingly, his first year was spent primarily working to clean up a very chaotic regulatory situation.

1993-1999 Citizens Utilities Company: Manager, Regulatory Affairs – Mr. Loy served as Project Manager of numerous multiple-company water and wastewater rate case filings, in Ohio, Illinois, Pennsylvania and Arizona. In those cases, he prepared and presented testimony, developed revenue requirement calculations, generated revenue and expense pro forma adjustments, performed working capital lead/lag studies, and evaluated rate design/cost of service issues. He proposed surcharge mechanisms for purchased water, a reverse osmosis process, and contract waste treatment. Additionally, Mr. Loy designed and directed the development of the multiple company revenue requirement models that generated filing schedules. In the fall of 1997, Citizens promoted Mr. Loy to Manager Regulatory Affairs. In the new position, he supervised the

## EXHIBIT CEL-1

*Charles E. Loy, CPA*  
Principal

GDS Associates, Inc.  
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staff responsible for all regulatory activity involving gas, electric and water/wastewater in ten states. He was a key member of a team that negotiated a multimillion dollar water and wastewater agreement with a major developer in Phoenix on behalf of Citizens.

1989-1993 Southern Union Gas Company: Rate Manager – Mr. Loy joined Southern Union as Sr. Internal Auditor. In that capacity, he contributed to multiple projects pertaining to the upcoming merger with a large publicly traded corporation. These projects included supervising audits of gas purchases, accounts receivable, accounts payable and oil and gas holdings. He was promoted to Rate Manager reporting to the Vice President of Regulatory Affairs. In that capacity, he supervised a team of four directing the preparation and implementation of 16 rate increase applications before various municipal and state regulatory bodies, and led negotiating sessions with elected and municipal officials. In addition to improving efficiency, he developed several rate mechanisms that resulted in increased earnings. One such efficiency was the Weather Normalization Adjustment Clause (WNAC). By eliminating weather-sensitive fluctuations, the WNAC increased earnings as much as 12%. He also developed a Cost of Service Adjustment Clause (CSAC) which was established in several smaller municipal jurisdictions. The CSAC allowed annual rate increases without the time and expense of major rate filings. Also, Mr. Loy performed analysis and due diligence for numerous municipal and private acquisitions.

1987-1989 Diversified Utility Consultants, Inc.: Sr. Accounting Analyst - Diversified Utility Consultants (DUC) is a consulting firm which represents consumers' interests in rate case proceedings. The firm's clients include municipalities and various state-supported consumer agencies. As a Sr. Accounting Analyst, Mr. Loy worked on seven electric rate cases, two gas rate cases and one water rate case.

Prior to 1987 Mr. Loy spent summers in college rough necking, both offshore and onshore, on oil and gas drilling rigs. His first job after college was in the oil & gas industry where he started in accounts receivable and specialized in collecting past due accounts. He was in the Joint Interest Auditing Department where he reviewed drilling costs and negotiated refunds for the company and its joint interest owners.

### Utility Rate Making Experience:

Mr. Loy has presented testimony and/or participated in cases before the following regulatory bodies:

Pennsylvania Public Utility Commission – Water/Wastewater, Steam  
Public Utilities Commission of Ohio – Water/Wastewater  
Indiana Regulatory Commission – Water/Wastewater  
Idaho Public Utilities Commission- Water  
Illinois Commerce Commission – Water/Wastewater  
Arizona Corporation Commission – Water/Wastewater, Conservation Rates, Reclaimed Water  
Arkansas Public Utility Commission - Water  
Oklahoma Corporation Commission - Gas  
Texas Railroad Commission - Gas  
Texas Public Utilities Commission – Electric  
Texas Commission on Environmental Quality – Water/Wastewater, Conservation Rates  
Delaware Public Service Commission – Water, Conservation Rates  
New Mexico Public Regulation Commission – Water, Conservation rates

**EXHIBIT CEL-1**

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New York Public Service Commission - Water  
Connecticut Department of Public Utility Control - Water  
New Jersey Board of Public Utilities - Water  
El Paso Public Utilities Board - Gas

## MARK H. ZEPPA

Law Offices of Mark H. Zeppa, PC  
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Austin, Texas 78759  
(512) 346-4011, Fax (512) 346-6847  
[markzeppa@austin.rr.com](mailto: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]

*EVOLVUTION 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