The PUA Board will consider Wholesale Water Rates at their November 15, 2012, Board meeting.

tks

don

263-0100

From: Joe DiQuinzio [mailto:jadco@austin.rr.com]
Sent: Tuesday, October 30, 2012 10:09 AM
To: 'Don Rauschuber'
Subject: Today's Meeting

Don,

I have been unable to reschedule my conflict so I won't be at today's meeting. What is the best way to find out what was discussed? We are very interested in the rate issue and will be submitting comments.

ATTACHMENT H

From: Joe DiQuinzio <jadco@austin.rr.com>
Sent: Tuesday, November 13, 2012 8:37 AM
To: 'Don Rauschuber'
Cc: 'Sue Brooks Littlefield'
Subject: Travis County MUD's 11, 12 and 13 Comments on WTCPUA Rate Study
Attachments: Questions re WTCPUA Rate Study.pdf

Don,
Attached is the review of the WTCPUA Rate Study by Jay Joyce of Expergy. As you will see, Mr. Joyce has identified a significant number of issues that deserve additional discussion prior to the adoption of any of the Rate Study recommendations. The Boards of Directors for Travis County MUD's 11, 12 and 13 respectfully request that no final action be taken regarding a WTCPUA rate revision until the issues identified by Mr. Joyce have been addressed. Please let me know how you would like to proceed.

From: Joe DiQuinzio <jadco@austin.rr.com>
Sent: Tuesday, January 15, 2013 3:00 PM
To: 'Don Rauschuber'
Subject: Meeting on Wholesale Contract with TC MUD 12

Don,
My rate consultant will be in Austin from Jan 28th –Feb 1st. Can you and Nelisa meet with us during that week?

From: Joe DiQuinzio <jadco@austin.rr.com>
Sent: Wednesday, January 16, 2013 12:56 PM
To: nheddin@wrmlp.com; 'Don Rauschuber'
Cc: 'Jay Joyce'; 'Allen Douthitt'
Subject: RE: Meeting on Wholesale Contract with TC MUD 12

Nelisa/Don
We can make 10:30 AM on the 31st.

-----Original Message-----
From: Nelisa Heddin [mailto:nheddin@wrmlp.com]
Sent: Wednesday, January 16, 2013 7:26 AM
To: 'Don Rauschuber'; 'Joe DiQuinzio'
Subject: RE: Meeting on Wholesale Contract with TC MUD 12

Don/Joe,

Unfortunately, I have another meeting that day and couldn't meet.

Alternatives:

January 28th - morning
January 31st - morning
February 1st - anytime

I apologize, my calendar is rather full this month.

-----Original Message-----
From: Don Rauschuber [mailto:generalmanager@wtcpua.org]
Sent: Tuesday, January 15, 2013 10:20 PM
To: 'Joe DiQuinzio'
Cc: Nelisa Heddin
Subject: RE: Meeting on Wholesale Contract with TC MUD 12

Joe:

Subject to Nelisa's schedule, I suggest meeting at 10:00 a.m., Tuesday, January 29, 2013, at the PUA's offices.

Nelisa: Is this O.K. with you.

Tks

don

263-0100

ATTACHMENT H

From: Joe DiQuinzio [mailto:jadco@austin.rr.com]
Sent: Tuesday, January 15, 2013 3:00 PM
To: 'Don Rauschuber'
Subject: Meeting on Wholesale Contract with TC MUD 12

Don,

My rate consultant will be in Austin from Jan 28th -Feb 1st. Can you and Nelisa meet with us during that week?

From: Joe DiQuinzio <jadco@austin.rr.com>
Sent: Tuesday, January 22, 2013 10:29 AM
To: nheddin@wrmlp.com; 'Don Rauschuber'
Cc: 'Jay Joyce'; 'Allen Douthitt'
Subject: RE: Meeting on Wholesale Contract with TC MUD 12

Are we set for January 31st at 10:30?

-----Original Message-----
From: Nelisa Heddin [mailto:nheddin@wrmlp.com]
Sent: Thursday, January 17, 2013 9:46 AM
To: 'Joe DiQuinzio'; 'Don Rauschuber'
Cc: 'Jay Joyce'; 'Allen Douthitt'
Subject: RE: Meeting on Wholesale Contract with TC MUD 12

That works for me - Don?

-----Original Message-----
From: Joe DiQuinzio [mailto:jadco@austin.rr.com]
Sent: Wednesday, January 16, 2013 12:56 PM
To: nheddin@wrmlp.com; 'Don Rauschuber'
Cc: 'Jay Joyce'; 'Allen Douthitt'
Subject: RE: Meeting on Wholesale Contract with TC MUD 12

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We can make 10:30 AM on the 31st.

-----Original Message-----
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To: 'Don Rauschuber'; 'Joe DiQuinzio'
Subject: RE: Meeting on Wholesale Contract with TC MUD 12

Don/Joe,

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January 28th - morning
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February 1st - anytime

I apologize, my calendar is rather full this month.

-----Original Message-----
From: Don Rauschuber [mailto:generalmanager@wtcpua.org]
Sent: Tuesday, January 15, 2013 10:20 PM

To: 'Joe DiQuinzio'
Cc: Nelisa Heddin
Subject: RE: Meeting on Wholesale Contract with TC MUD 12

Joe:

Subject to Nelisa's schedule, I suggest meeting at 10:00 a.m., Tuesday, January 29, 2013, at the PUA's offices.

Nelisa: Is this O.K. with you.

Tks

don

263-0100

From: Joe DiQuinzio [mailto:jadco@austin.rr.com]
Sent: Tuesday, January 15, 2013 3:00 PM
To: 'Don Rauschuber'
Subject: Meeting on Wholesale Contract with TC MUD 12

Don,

My rate consultant will be in Austin from Jan 28th -Feb 1st. Can you and Nelisa meet with us during that week?

From: Joe DiQuinzio <jadco@austin.rr.com>
Sent: Tuesday, January 22, 2013 2:07 PM
To: nheddin@wrmlp.com; 'Don Rauschuber'
Cc: 'Jay Joyce'; 'Allen Douthitt'
Subject: RE: Meeting on Wholesale Contract with TC MUD 12

Perfect. Thank-you.

-----Original Message-----
From: Nelisa Heddin [mailto:nheddin@wrmlp.com]
Sent: Tuesday, January 22, 2013 1:45 PM
To: 'Joe DiQuinzio'; 'Don Rauschuber'
Cc: 'Jay Joyce'; 'Allen Douthitt'
Subject: RE: Meeting on Wholesale Contract with TC MUD 12

Joe,

We are all available for the meeting on that day. We look forward to seeing you at the PUA's offices.

-----Original Message-----
From: Joe DiQuinzio [mailto:jadco@austin.rr.com]
Sent: Tuesday, January 22, 2013 10:29 AM
To: nheddin@wrmlp.com; 'Don Rauschuber'
Cc: 'Jay Joyce'; 'Allen Douthitt'
Subject: RE: Meeting on Wholesale Contract with TC MUD 12

Are we set for January 31st at 10:30?

-----Original Message-----
From: Nelisa Heddin [mailto:nheddin@wrmlp.com]
Sent: Thursday, January 17, 2013 9:46 AM
To: 'Joe DiQuinzio'; 'Don Rauschuber'
Cc: 'Jay Joyce'; 'Allen Douthitt'
Subject: RE: Meeting on Wholesale Contract with TC MUD 12

That works for me - Don?

-----Original Message-----
From: Joe DiQuinzio [mailto:jadco@austin.rr.com]
Sent: Wednesday, January 16, 2013 12:56 PM
To: nheddin@wrmlp.com; 'Don Rauschuber'
Cc: 'Jay Joyce'; 'Allen Douthitt'
Subject: RE: Meeting on Wholesale Contract with TC MUD 12

Nelisa/Don
We can make 10:30 AM on the 31st.

-----Original Message-----

From: Nelisa Heddin [mailto:nheddin@wrmlp.com]
Sent: Wednesday, January 16, 2013 7:26 AM
To: 'Don Rauschuber'; 'Joe DiQuinzio'
Subject: RE: Meeting on Wholesale Contract with TC MUD 12

Don/Joe,

Unfortunately, I have another meeting that day and couldn't meet.

Alternatives:

January 28th - morning
January 31st - morning
February 1st - anytime

I apologize, my calendar is rather full this month.

-----Original Message-----
From: Don Rauschuber [mailto:generalmanager@wtcpua.org]
Sent: Tuesday, January 15, 2013 10:20 PM
To: 'Joe DiQuinzio'
Cc: Nelisa Heddin
Subject: RE: Meeting on Wholesale Contract with TC MUD 12

Joe:

Subject to Nelisa's schedule, I suggest meeting at 10:00 a.m., Tuesday, January 29, 2013, at the PUA's offices.

Nelisa: Is this O.K. with you.

Tks

don

263-0100

From: Joe DiQuinzio [mailto:jadco@austin.rr.com]
Sent: Tuesday, January 15, 2013 3:00 PM
To: 'Don Rauschuber'
Subject: Meeting on Wholesale Contract with TC MUD 12

Don,

My rate consultant will be in Austin from Jan 28th -Feb 1st. Can you and Nelisa meet with us during that week?

From: Joe DiQuinzio <jadco@austin.rr.com>
Sent: Monday, March 25, 2013 1:26 PM
To: 'Don Rauschuber'
Subject: Wholesale Customer Mtg

Don,
I had planned on attending the meeting this afternoon, but now have a conflict. Can you email whatever materials are distributed at the meeting? I have a TC MUD 12 Board meeting tomorrow and I would like to present it to them. I apologize for the last minute notice. thank-you.

From: Joe DiQuinzio <jadco@austin.rr.com>
Sent: Thursday, June 06, 2013 1:25 PM
To: 'Don Rauschuber'
Subject: RE: WTCPUA Wholesale Customer Rates

Understood.

From: Don Rauschuber [mailto:generalmanager@wtcpua.org]
Sent: Thursday, June 06, 2013 11:22 AM
To: Joe DiQuinzio
Subject: FW: WTCPUA Wholesale Customer Rates

Joe:
Please see my responses below.

Tks
don

From: Joe DiQuinzio [mailto:jadco@austin.rr.com]
Sent: Wednesday, June 05, 2013 12:56 PM
To: 'Don Rauschuber'
Cc: 'Sue Brooks Littlefield'; 'Jay Joyce'; 'Allen Douthitt'
Subject: RE: WTCPUA Wholesale Customer Rates

Don,
Got it. Thanks.
I am a little unclear about the message. Please confirm whether there will be additional discussions regarding the wholesale rates or if it is the PUA's position that the process is essentially complete?

[redacted]

Also, does the PUA intend not to release the credit rating agency documents that have been requested?

[redacted]

It seems to me that those records should be available to the public. We hope that the PUA intends to continue the rate dialogue and provide all relevant information regarding the PUA's financial position to the customers who will be affected by both.

From: Don Rauschuber [mailto:generalmanager@wtcpua.org]
Sent: Tuesday, June 04, 2013 9:34 PM
To: Joe DiQuinzio
Subject: RE: WTCPUA Wholesale Customer Rates

Joe:

From: Joe DiQuinzio <jadco@austin.rr.com>
Sent: Friday, April 26, 2013 8:30 AM
To: 'Don Rauschuber'
Cc: 'Jay Joyce'; 'Allen Douthitt'; 'Sue Brooks Littlefield'; 'Nelisa Heddin'; Stefanie Albright
Subject: RE: WTCPUA Wholesale Rate Process

OK with me.

From: Don Rauschuber [mailto:generalmanager@wtcpua.org]
Sent: Thursday, April 25, 2013 11:24 PM
To: 'Joe DiQuinzio'
Cc: 'Jay Joyce'; 'Allen Douthitt'; 'Sue Brooks Littlefield'; Nelisa Heddin; salbright@lglawfirm.com
Subject: RE: WTCPUA Wholesale Rate Process

Joe:

1. I have an long afternoon meeting scheduled for next Wednesday afternoon.
2. How about 2:00 p.m. Tuesday, April 30, 2013, at the PUA offices?
3. By copy of this e-mail to Nelisa Heddin and Stefanie Albright, I'll requesting their availability and confirmation.

Tks
don

From: Joe DiQuinzio [mailto:jadco@austin.rr.com]
Sent: Thursday, April 25, 2013 12:24 PM
To: 'Don Rauschuber'
Cc: 'Jay Joyce'; 'Allen Douthitt'; 'Sue Brooks Littlefield'
Subject: WTCPUA Wholesale Rate Process

Don,
We would like to meet with you and Nelisa next Wednesday afternoon to discuss the data the Nelisa has requested and the wholesale rate study, in general. We are available between 1:30 and 4. In the alternative we are also available Tuesday afternoon between 2-4. Let me know what works best for you and Nelisa.

ATTACHMENT H

From: Joe DiQuinzio <jadco@austin.rr.com>
Sent: Thursday, April 25, 2013 12:24 PM
To: 'Don Rauschuber'
Cc: 'Jay Joyce'; 'Allen Douthitt'; 'Sue Brooks Littlefield'
Subject: WTCPUA Wholesale Rate Process

Don,
We would like to meet with you and Nelisa next Wednesday afternoon to discuss the data the Nelisa has requested and the wholesale rate study, in general. We are available between 1:30 and 4. In the alternative we are also available Tuesday afternoon between 2-4. Let me know what works best for you and Nelisa.

From: Joe DiQuinzio <jadco@austin.rr.com>
Sent: Friday, May 31, 2013 12:43 PM
To: 'Don Rauschuber'; 'Nelisa Heddin'
Cc: 'Sue Brooks Littlefield'; 'Jay Joyce'; 'Allen Douthitt'; roger.durden@gmail.com; long@wheelockstreetland.com; bruceaupperle@me.com
Subject: WTCPUA Wholesale Customer Rates

Don, Nelisa,
Over the past several months, the PUA has identified two events as being critical to the financial future of the PUA: successful legislation to convert the PUA to a Regional Water Authority and the subsequent obtainment of an investment grade bond rating. It is my understanding that the Regional Water Authority legislation was not successful and that the PUA is proceeding with submittals to the credit rating agencies. Obviously the outcome of these two processes will have a significant impact on the current rate structure discussions. In order for Travis County MUD's 11, 12 and 13 to adequately evaluate this impact we would like to receive an explanation of the impact of the failed legislation and copies of all documents that are being submitted to the rating agencies. Once we have reviewed this information we suggest that the PUA hold a meeting with all of the Wholesale Customers to discuss the implications and to outline the next steps in the process.

Please see my 12:39 p.m. e-mail of this date.
If I may be of further assistance, please advise.
Tks
don
263-0100

From: Joe DiQuinzio [mailto:jadco@austin.rr.com]
Sent: Friday, May 31, 2013 12:43 PM
To: 'Don Rauschuber'; 'Nelisa Heddin'
Cc: 'Sue Brooks Littlefield'; 'Jay Joyce'; 'Allen Douthitt'; roger.durden@gmail.com; long@wheelockstreetland.com; bruceaupperle@me.com
Subject: WTCPUA Wholesale Customer Rates

Don, Nelisa,
Over the past several months, the PUA has identified two events as being critical to the financial future of the PUA: successful legislation to convert the PUA to a Regional Water Authority and the subsequent obtainment of an investment grade bond rating. It is my understanding that the Regional Water Authority legislation was not successful and that the PUA is proceeding with submittals to the credit rating agencies. Obviously the outcome of these two processes will have a significant impact on the current rate structure discussions. In order for Travis County MUD's 11, 12 and 13 to adequately evaluate this impact we would like to receive an explanation of the impact of the failed legislation and copies of all documents that are being submitted to the rating agencies. Once we have reviewed this information we suggest that the PUA hold a meeting with all of the Wholesale Customers to discuss the implications and to outline the next steps in the process.

ATTACHMENT H

From: Joe DiQuinzio <jadco@austin.rr.com>
Sent: Wednesday, June 19, 2013 3:32 PM
To: 'Don Rauschuber'
Cc: 'Sue Brooks Littlefield'; 'Jay Joyce'; 'Allen Douthitt'
Subject: WTCPUA June 20th Board Meeting

Don,
Two items on this agenda potentially affect the on-going wholesale rate discussions: VI. A. 5 "Update regarding Save Our Springs Open Records Request" and VIII. B. "Discuss, consider and take action on amendments to wholesale water agreements". In order for Travis County MUD 12 to continue its evaluation of the proposed wholesale water rates, please provide me with the SOS Open Records Request and any support materials that the Board will utilize for its wholesale water agreements discussion, consideration and action. Do you expect the Board to take action on the wholesale water agreements? If so, what action is being proposed and/or recommended? Thank-you.

From: Joe DiQuinzio <jadco@austin.rr.com>
Sent: Saturday, August 03, 2013 12:46 PM
To: 'Don Rauschuber'
Cc: 'Sue Brooks Littlefield'; 'Jay Joyce'; 'Robert Anderson'
Subject: loose ends

Don,
Can you update me on a few outstanding issues? 1. I am told, as of this morning, that the repairs to the SH 71 master meter vault have not been made. It is my understanding that the chlorine fumes from the leak have reached a level where it is not safe to read the meter on a daily basis. When will these repairs be made? 2. The wholesale rate negotiations were to begin again in August. Do you have a schedule or proposed format for these? 3. TC MUD's 11-13 are implementing one day a week watering restrictions, beginning August 1. What restrictions does the PUA currently enforce? If these are likely to change, when and to what ? Thank-you.

From: Joe DiQuinzio <jadco@austin.rr.com>
Sent: Sunday, August 04, 2013 11:42 AM
To: 'Don Rauschuber'
Cc: 'Sue Brooks Littlefield'; 'Jay Joyce'; 'Robert Anderson'
Subject: RE: loose ends

Don,
Thank-you.

From: Don Rauschuber [mailto:generalmanager@wtcpua.org]
Sent: Saturday, August 03, 2013 9:50 PM
To: 'Joe DiQuinzio'
Subject: RE: loose ends

Joe:
See my responses below.
Tks
don

From: Joe DiQuinzio [mailto:jadco@austin.rr.com]
Sent: Saturday, August 03, 2013 12:46 PM
To: 'Don Rauschuber'
Cc: 'Sue Brooks Littlefield'; 'Jay Joyce'; 'Robert Anderson'
Subject: loose ends

Don,
Can you update me on a few outstanding issues? 1. I am told, as of this morning, that the repairs to the SH 71 master meter vault have not been made. It is my understanding that the chlorine fumes from the leak have reached a level where it is not safe to read the meter on a daily basis. When will these repairs be made? I requested STES again last week to make needed improvements at the master meter vault (including replacing the hose bib and install a permanent OSHA approved latter). I will find out on Monday the status and report to you.

2. The wholesale rate negotiations were to begin again in August. Do you have a schedule or proposed format for these? I will be forwarding a letter to all wholesale customers by or on August 9, 2013 setting forth a PUA schedule.

3. TC MUD's 11-13 are implementing one day a week watering restrictions, beginning August 1. What restrictions does the PUA currently enforce? The PUA commenced once per week landscape irrigation last week. Attached is a customer notice listing water restrictions currently in-place.

If these are likely to change, when and to what ? The PUA's Stage 3 restrictions, prohibiting all landscape irrigation, commences when the combined storage of Lake Travis and Lake Buchanan falls below 600,000 af. The LCRA is projecting this will occur in September 2013, unless significant rain/runoff occurs above Mansfield Dam.

Thank-you.

From: Joe DiQuinzio <jadco@austin.rr.com>
Sent: Wednesday, August 14, 2013 8:39 AM
To: 'Robert Anderson'; 'John Durham'
Cc: 'Earl Foster'; 'Earl Wood'; 'Don Rauschuber'; 'Debbie Gernes'
Subject: RE: >Re-sending< Water Theft from Fire Hydrants in ESD 6

All,
I have spoken with LMUD and Hurst Creek MUD about this issue. They will agree with the selection made by the other participants. Since WCID 17 and the PUA likely have the greatest number of hydrants affected, I suggest that they take the lead on selecting a common device. Travis County MUD's 11-13 will also agree with that selection. Please let me know if there is any way I can help to resolve this matter. We would like to begin installations as soon as possible.

From: Robert Anderson [mailto:RAnderson@crossroadsus.com]
Sent: Wednesday, August 14, 2013 7:47 AM
To: John Durham
Cc: Joe DiQuinzio
Subject: RE: >Re-sending< Water Theft from Fire Hydrants in ESD 6

John, I am the one who first brought this up to you a couple of weeks ago with regards to TC MUDs 11, 12 and 13, the Rough Hollow area. Joe DiQuinzio is the general manager for these MUDs and would like to be involved in these discussions. Please add him to your email list. jadco@austin.rr.com

Thank you.

Robert E. Anderson

Robert E. Anderson
Contract General Manager
Crossroads Utility Services
512-246-5918
512-246-1900 fax
512-740-0010 cell
randerson@crossroadsus.com

Crossroads utility services

From: John Durham [mailto:jdurham@ltfr.org]
Sent: Tuesday, August 13, 2013 8:05 PM
To: Robert Anderson; Debbie Gernes; Dan Roark; efoster@lakewaymud.org; generalmanager@wtcpua.org
Subject: >Re-sending< Water Theft from Fire Hydrants in ESD 6

Greetings All,

I am sending this out again, whereas I have not yet received any comments from anyone. Your input would be most appreciated. Thank you in advance. Perhaps this is not a problem or concern at all and I'm willing to accept that answer.

I have spoken with representatives from a couple of your agencies recently regarding what appears to be the growing problem of water theft from fire hydrants. Thanks to the continued drought, this not only probably won't go away anytime soon, but most likely will get worse as time progresses and drought conditions persist, or even worsen.

I have had at least one inquiry about the potential installation of security devices on fire hydrants in an attempt to prevent water theft. Of course, as you know, ESD 6 does not own, maintain or control any of the water utility infrastructure in our District, including the fire hydrants. Although the fewer motions we have to go through to tap a fire hydrant for emergencies the better, ESD 6 certainly recognizes and respects your obligation to protect this critical resource. It is in the best interest of all of us, particularly the customers we all serve. There is perhaps an opportunity here to collaborate on working toward solutions to this issue.

In searching current security devices for fire hydrants, I have landed on a few possible choices, (some links and attachments included in this email). There are no doubt others out there. Your cost as the water provider will obviously be a consideration should you choose to implement such measures on any of your fire hydrants. As a general rule, I would suspect we would be talking about a relatively small percentage of fire hydrants that you would actually consider installing a security device on anyway. I wish I could say that ESD 6 has deep pockets and could afford to bear a substantial burden of the expense, however, I do think some measure of participation on the District's part financially might be in order, particularly with the purchase of the additional wrenches that would be required to be placed on each of our apparatus.

The most critical consideration to me would be that all could agree on ONE particular device to be used in our District, so as to limit the different types of wrenches our apparatus would have to carry. Perhaps this problem is already being addressed in other areas of Travis County and I'm just not aware of it?

I would sincerely appreciate any input on this concern. Please do not hesitate to jump in with your thoughts or contact me directly. Did I leave anyone out?

Hydra-Shield Hydrant Locks:
http://www.hydra-shield.com/products/5-custodian-hydrant-lock
http://www.hydra-shield.com/products/6-heavy-duty-custodian
http://www.hydra-shield.com/products/7-hydrant-dome-lock
http://www.hydra-shield.com/products/10-hydrant-security-cap

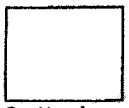
Mueller Hydrant Defender Security Device:
http://www.youtube.com/watch?v=wSap3AvFcoY

Best Regards to All,

John

John R. Durham, CFE
Asst. Fire Chief - Div. of Fire Prevention & Community Emerg. Prep.
Wildland Fuels Management
Travis County ESD No. 6 - Lake Travis Fire Rescue
15304 Pheasant Ln., Suite 103 - P.O. Box 340196
Austin, Texas 78734
(512) 266-2533 Ext. 2322
(512) 203-0637 Cell

(512) 266-4060 Fax
http://www.ltfr.org/



2 attachments — Download all attachments

				Keystone Construction Inc. PO Box 90398 Austin TX 78709 512-288-6437		Austin Engineering Co., Inc. 3317 Ranch Road 620 North Austin, TX 78734 512-327-1464	
				Base Bid		Base Bid	
Item No.	Quantity	Units	Description	Unit Price	Amount	Unit Price	Amount
E-1	17,082	LF	Furnish and Maintain Temporary Silt Fence - complete in place	$2 50	$42,705 00	$2.25	$38,434 50
E-2	340	LF	Furnish and Install Rock Berm - complete in place	$30.00	$10,200 00	$12 00	$4,080 00
E-3	10	EA	Furnish and Install Stabilized Construction Entrance- complete in place	$1,600 00	$16,000 00	$1,200 00	$12,000 00
E-4	85,317	SY	Furnish and Install Permanent Revegetation - all disturbed areas in LOC (17 Ac)	$0 30	$25,595 10	$0 50	$42,658 50
			Subtotal Erosion and Sedimentation Controls		**$94,500.10**		**$97,173.00**
B-1	1	LS	Mobilization	$116,300 00	$116,300 00	$140,000 00	$140,000 00
B-2	800	SY	Pavement / Driveway Repair	$26.00	$20,800 00	$19 00	$15,200 00
B-3	1	LS	Traffic Controls	$9,800 00	$9,800 00	$35,000 00	$35,000 00
B-4	1	LS	Clearing and Haul Off	$20,500.00	$20,500.00	$65,000 00	$65,000 00
B-5	3,205	LF	Chain Link Fence	$2 60	$8,333 00	$3 20	$10,256 00
B-6	5	EA	Concrete Retards	$500.00	$2,500 00	$1,600 00	$8,000 00
B-7	41	EA	Tree Protection (Board)	$140.00	$5,740 00	$200 00	$8,200 00
B-8	105	LF	Tree Protection (Fencing)	$3.00	$315 00	$2 20	$231 00
			Subtotal Miscellaneous and Traffic Controls		**$184,288.00**		**$281,887.00**
C-1	15,617	LF	Furnish and Install 16" Class 250 DIP Water Line (All depths), including all restraints, valves and appurtenances, complete in place	$84.60	$1,321,198.20	$112 00	$1,749,104.00
C-2	767	LF	Furnish and Install 16" Class 250 DIP Water Line, bore and 30" steel encas (All Depths), including all fittings, spacers, restraints, valves and appurtenai complete in place	$520.00	$398,840 00	$540 00	$414,180 00
C-3	20	LF	Furnish and Install 16" Class 250 DIP Water Line Open Cut and 30" Encas (All Depths) including all fittings, spacers, restraints and appurtenances, co place	$250.00	$5,000 00	$366 00	$7,320.00
C-4	2434	LF	Adder to Furnish and Install Restrained Joint Pipe, complete in place	$33 00	$80,322 00	$22 50	$54,765 00
C-5	10	EA	Furnish and Install 16" Isolation Valve, Resilient Wedge, with 3" bypass, in all fittings, restraints and appurtenances, complete in place	$6,880 00	$68,800 00	$6,400 00	$64,000 00
C-6	14	EA	Furnish and Install 2" Combination Air Release & Vacuum Valve, including fittings, restraints and appurtenances, complete in place	$2,460 00	$34,440 00	$1,400 00	$19,600 00
C-7	1	EA	Furnish and Install 3" Combination Air Release & Vacuum Valve, including fittings, restraints and appurtenances, complete in place	$5,070 00	$5,070 00	$4,300 00	$4,300 00
C-8	8	EA	Furnish and Install Standard Fire Hydrant Assembly (No Arms), including a fittings, restraints and appurtenances, complete in place	$5,800 00	$46,400 00	$5,250 00	$42,000 00
C-9	6	EA	Furnish and Install Fire Hydrant Assembly and Service Tee (One Arm), inc fittings, restraints and appurtenances, complete in place	$6,700 00	$40,200 00	$6,260 00	$37,560 00
C-10	6	EA	Furnish and Install Fire Hydrant Assembly and Service Tee (Two Arms), in all fittings, restraints and appurtenances, complete in place	$7,010 00	$42,060 00	$7,050 00	$42,300 00
C-11	30	LF	Furnish and Install 8" Class 250 DIP Water Line (All depths), including all restraints, valves and appurtenances, complete in place	$54 00	$1,620 00	$58 00	$1,740 00
C-12	70	LF	Furnish and Install 8" Class 250 DIP Water Line Open Cut and 20" Encase (All Depths) including all fittings, spacers, restraints and appurtenances, co place	$160 00	$11 200 00	$184 00	$12,880 00
C-13	1	EA	8" Gate Valve and Plug, including all fittings, restraints and appurtenances, com plete in place	$,630 00	$1,630 00	$1 580 00	$,580 00
C-14	15,737	LF	Trench Safety System (including bore pits)	$0 40	$6 294 80	$1 00	$15 73 00
			Subtotal Water Line Improvements		$2,063,075.00		$2,467,066.00
			TOTAL CONTRACT BID AMOUNT		$2,341,863 10		$2,846,126.00

ATTACHMENT H

From: Joe DiQuinzio <jadco@austin.rr.com>
Sent: Tuesday, August 20, 2013 5:05 PM
To: 'Don Rauschuber'
Cc: 'Sue Brooks Littlefield'; 'Jay Joyce'; 'Allen Douthitt'
Subject: Outstanding Issues

Don,
Murfee asked about the TC 11-13 PUA system active accounts and annual starts. As of June 30th there were 98 occupied SF units. Planning projections are for approximately 50 new connections in 2013.
I am told that the repairs to the chlorine system in the master meter vault are still not complete. I am also told that we continue to experience very poor water quality at the delivery point due to erratic LAS balances. Both of these issues affect the safety of the Districts employees and customers. Please let me know when they will be addressed.
You have previously represented that a Notice regarding the Wholesale rates would be distributed on or before August 9th. I have no record of receiving this Notice. Has it gone out? What is the structure for resuming the wholesale rate discussions?

SOAH DOCKET NO. 582-02-2470
TCEQ DOCKET NO. 2001-1583-UCR

PETITION FROM THE CITY OF MCALLEN TO APPEAL THE WHOLESALE WATER RATE INCREASE OF HIDALGO COUNTY WID NO. 3 AND REQUEST FOR INTERIM RATES IN HIDALGO COUNTY (APPLICATION NO. 33671-M)	§	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. Introduction

The City of McAllen (the City) has appealed the wholesale water rate increase adopted by Hidalgo County Water Improvement District No. 3 (the District). The City contends that the wholesale water rate increase is adverse to the public interest. The District and the Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission) assert that the rate increase is not adverse to the public interest and that the appeal by the City should be denied.

As set forth in this proposal for decision, the Administrative Law Judge (ALJ) concludes that the wholesale water rate increase is not adverse to the public interest. For this reason, the ALJ recommends that the City's appeal be denied.

II. Summary

This case involves a water rate dispute between two entities (the City and the District) that have had a long-standing, interdependent relationship since the 1940s. The relationship has been fairly informal through much of that time, with the parties reaching agreements on appropriate water rates and without the District participating in rate-setting proceedings. Over the last 50 years, the City has gone from being just one of many among the District's customers to being its primary customer—accounting for 80-90% of the District's water sales by volume. When the District raised water rates by $0.01 per 1,000 gallons (a 14% increase) in 2001 as a result of rising operational expenses, the City appealed and initiated this proceeding.

While the City raises numerous issues, this case really boils down to one underlying question:

Is it an abuse of monopoly power for the District to raise rates to the City because of increased operating expenses, while at the same time the District's financial position is being strengthened by the receipt of significant non-operating revenues?

The City contends that the District's entire financial picture should be reviewed and, because the District's overall revenues are increasing against expenses, it should not be allowed to raise rates. According to the City, the decision by the District to raise rates under such circumstances represents an abuse of monopoly power. The District disagrees, arguing that it is not appropriate for the City's water service to be subsidized by revenues from other sources. The District argues that it is not appropriate for the City to be paying only 61% of operating revenues when it is consuming at least 80% of the water pumped by the District. It is this essential, underlying dispute that frames all other issues in this case.

Ultimately, the ALJ concludes that, in analyzing whether there are changed conditions that justify the rate increase, it is not necessary for the Commission to look at all sources of income for the District. Rather, in the context of the public interest analysis and determining whether there are changed conditions that justify a rate increase, the ALJ concludes that it is appropriate to look at increased operating expenses without offsetting them against non-operating revenues. From the evidence in this case, the ALJ concludes that the District has demonstrated that its operational expenses have been increasing, that this justifies its rate increase, and that the rate increase is not the result of an abuse of monopoly power by the District. The basis for these conclusions, along with a discussion of the issues, is set forth in this proposal for decision.

III. Parties

There are three active parties to this case: the City, the District, and the ED. The Public Interest Counsel of the Commission initially was granted party status, but did not appear at—nor participate in—the hearing on the merits nor file any post-hearing briefs. No other persons or entities have sought party status in this case.

IV. Procedural History and Jurisdiction

This proceeding began when the City filed a petition challenging the wholesale water and transportation rates charged to the City by the District pursuant to a contract between the parties. The petition was filed by the City under the provisions of TEX. WATER CODE ANN. §§ 11.041, 12.013, and 13.043(f), and Chapter 291 of the Commission's rules.[1] On November 14, 2001, the petition was declared administratively complete and was thereafter referred to the State Office of Administrative Hearings (SOAH) on December 31, 2001.

A preliminary hearing was conducted on May 23, 2002, at which time notice exhibits were offered and admitted into evidence. After reviewing the evidence admitted at the preliminary hearing and the applicable statutes and rules, the ALJ concluded that the Commission has jurisdiction to consider and act on the City's appeal under TEX. WATER CODE ANN. § 13.043(f) and issued an order setting this case for hearing. The hearing on the merits was then conducted on October 3-4, 2002, and the record closed on December 6, 2002, with the filing of the last written briefs. No parties have challenged the jurisdiction of either the Commission or SOAH in this case, nor asserted any notice deficiencies. SOAH ALJs have jurisdiction to conduct a hearing and to prepare a proposal for decision in this matter under TEX. GOV'T CODE § 2003.047.

V. Discussion and Analysis

A. Background Facts.

The District has supplied water to the City since the 1940s. Currently, the District directly delivers 13,980 acre-feet of water per year to the City, and transports approximately 5,000 acre-feet more per year to the City from United Irrigation District (United). Combined, these amounts constitute approximately 72% of the City's existing raw water usage needs. The City obtains all of its raw water supply from the Rio Grande, and the water is transported to the City's raw water reservoir (Boeye Reservoir) by two different entities: (1) the District; and (2) Hidalgo County

[1] 30 TEX. ADMIN. CODE ch. 291.

Irrigation District No. 2 (District #2).[2] The City does not own any river pumping facilities or canals to transport raw water from the Rio Grande to Boeye Reservoir, but relies solely on the District and District #2 for transportation services.[3]

The City currently has only one water treatment plant with a treatment capacity of 39 million gallons per day. All of the raw water treated by the City for retail sale must first be delivered into the Boeye Reservoir and then treated at the City's lone water treatment plant.[4] In addition to delivering water, the District also manages the delivery of all raw water into the City's reservoir, which includes the amount that it delivers and the amount delivered by District #2 through a pipeline emptying into the reservoir.[5]

Between 1983 and 1995, the District's rates to the City did not change. In 1995, the District's rates were raised pursuant to an agreement reached by the District and the City. However, the contract reflecting the agreement was not ratified by all parties until May 1999, when the District and the City finalized the contract for water delivery,[6] which revised the rates charged by the District. Under the Contract, the City paid $0.095 per 1,000 gallons of water provided and delivered by the District, and $0.07 per 1,000 gallons for water provided by another entity but delivered by the District.[7] The contract rates were effective for 12 months and could be adjusted thereafter by the District in its discretion, but the District was required to (1) give the City timely notice under the Contract and (2) adjust the rates charged to the City on an equivalent percentage basis as adjustments

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[2] City Ex. 1, at 4-8. The transcript refers to "Bowie Reservoir," but the correct spelling is "Boeye."

[3] City Ex. 1, at 7.

[4] *Id.*

[5] *Id.* at 8. While the District physically controls only its own water delivery into the reservoir, it also manages the scheduling of the delivery of water from District #2 (through District #2's pipeline).

[6] The *Permanent Water Supply and Delivery Contract* (the Contract) dated May 1, 1999.

[7] *Id.* at 10.

made to the charges of the District's other water customers.[8] The Contract does not have specific provisions for calculating rate adjustments, leaving those determinations to the District, but the Contract does preserve the City's appeal rights under the law—including appeal rights under the Water Code.

In 2000, the District raised its rates for all customers and notified the City of a rate increase of two cents per 1,000 gallons for water delivery. The City disputed the increase and, after the City's representative spoke to the District's Board of Directors, the District rescinded the rate increase for the City.[9] A year later, in 2001, the District again notified the City that it would raise rates effective September 1, 2001. The proposed rate increase this time was one cent per 1,000 gallons, to $0.105 for water provided and delivered by the District and $0.08 for water simply transported by the District. The City again challenged the rate increase, but this time the District did not rescind it, leading to this appeal by the City.

B. The Relevant Law.

The City's petition was filed under the provisions of TEX. WATER CODE ANN. §§ 11.041, 12.013, and 13.043(f), and Chapter 291 of the Commission's rules. Section 11.041 of the Water Code provides that a person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present to the Commission a written petition showing that the price demanded for the available water is not reasonable and just or is discriminatory.[10] Section 12.013 of the Water Code gives the Commission authority to review and fix reasonable rates for the furnishing of raw or treated water, and Section 13.043(f) allows a retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state to appeal to the Commission changes in water rates charged to the utility.

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[8] City Ex. 1, attachment 2, at 4-5 (paragraph 10 of the Contract).

[9] District Ex. 5, at 5. The proposed rate increase for customers other than the City still went into effect.

[10] TEX. WATER CODE § 11.041(a)(4).

However, the Commission's rules specifically require a bifurcated hearing process for appeals from rates based on written contracts.[11] The initial hearing on an appeal is conducted for the purpose of determining whether the protested rate adversely affects the public interest.[12] At this hearing, the protesting party (here, the City) bears the burden of proof.[13] Commission rule 291.133 sets out the criteria for determining whether a protested rate adversely affects the public interest. In this case, the City relies only on subpart (a)(3) of Commission rule 291.133. In pertinent part, that rule provides that a protested rate adversely affects the public interest if the following is shown to exist:

> (3) the protested rate evidences the seller's abuse of monopoly power in its provision of water or sewer service to the purchaser. In making this inquiry, the commission shall weigh all relevant factors. The factors may include:
>
> > (A) the disparate bargaining power of the parties, including the purchaser's alternative means, alternative costs, environmental impact, regulatory issues, and problems of obtaining alternative water or sewer service;
> >
> > (B) the seller's failure to reasonably demonstrate the changed conditions that are the basis for a change in rates;
> >
> > (C) the seller changed the computation of the revenue requirement or rate from one methodology to another;
> >
> > (D) where the seller demands the protested rate pursuant to a contract, other valuable consideration received by a party incident to the contract;
> >
> > (E) incentives necessary to encourage regional projects or water conservation measures;
> >
> > (F) the seller's obligation to meet federal and state wastewater discharge and drinking water standards;

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[11] 30 TEX. ADMIN. CODE §§ 291.131(b), 291.132, and 291.134.

[12] *Id.*

[13] 30 TEX. ADMIN. CODE § 291.136.

(G) the rates charged in Texas by other sellers of water or sewer service for resale;

(H) the seller's rates for water or sewer service charged to its retail customers, compared to the retail rates the purchaser charges its retail customers as a result of the wholesale rate the seller demands from the purchaser.[14]

While the Commission's rules clearly state that it is appropriate to consider the seller's ability to demonstrate changed conditions that would justify a rate increase, the rules also state that the public interest issue is not to be decided based on an analysis of the seller's cost of service.[15]

C. The Disputed Issue: Does the Protested Rate Adversely Affect the Public Interest Because it Evidences the District's Abuse of Monopoly Power?

As noted, the City challenges the protested rate on only one ground, arguing that it evidences the District's abuse of monopoly power. The City asserts that it is entitled to a finding in its favor on this contention because of four specific factors: (1) the City and the District have disparate bargaining power; (2) the District has failed to demonstrate changed conditions that would justify the increased rates; (3) the District changed the computation of the revenue requirement or rate from one methodology to another; and (4) the proposed rate increase is unreasonably preferential, prejudicial, or discriminatory. The first three of these factors are specifically identified in the Commission's rules as appropriate factors for analysis.[16] The fourth factor is not identified in the Commission's rules in the manner identified by the City, but the City contends that it is an appropriate factor to consider nonetheless when analyzing whether the District has abused a monopoly power. Each of these factors is specifically discussed below, with the parties' arguments addressed and analyzed.

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[14] 30 TEX. ADMIN. CODE § 291.133(a)(3).

[15] 30 TEX. ADMIN. CODE § 291.133(b).

[16] 30 TEX. ADMIN. CODE § 291.133(a)(3)(A)-(C).

1. Do the City and the District have Disparate Bargaining Power?

The City contends that there is disparate bargaining power between it and the District. In particular, the City argues that it has no viable alternatives for obtaining the water needed for its citizens. It points out that the District supplies 72% of its raw water needs and controls the physical delivery of all raw water into the City's reservoir. While the City agrees that it can purchase raw water from other suppliers, specifically District #2 and United, it argues that it does not have the ability to physically receive all of the water it needs without the aid of the District, which controls the primary pumping station and canal for transporting water to the City's reservoir. Specifically, any water purchased from other sources must be transported by the District or District #2, but District #2's pipe into the City's reservoir is inadequate to supply the total amount of water needed by the City. Therefore, the City alleges that it is dependent on the District.

Because the District charges for the delivery of water (in addition to the purchase of raw water), the City cannot avoid its dependence on the District simply by purchasing water elsewhere. The District's rate increase for water delivery will still adversely impact it. To circumvent this control by the District, the City would have to build its own pump station and construct a canal system for the delivery of water or, alternatively, construct new water treatment storage facilities connected to other suppliers' delivery systems. The City argues that it would be extremely expensive and cost-prohibitive to undertake such actions, and that the District was aware of this when it raised rates. Moreover, the City points out that it would be required to conduct environmental assessments and obtain the necessary regulatory approval before constructing such facilities. Even assuming it was economically feasible, the City estimates it would still take years to complete such projects. Because of this, the City contends that it has disparate bargaining power with the District.

The District and the ED disagree that the District is a monopoly, and they argue that there is no disparate bargaining power between the District and the City. The District disputes that it provides the majority of the City's water, pointing out that it only supplies 13,980 acre-feet per year

to the City, while the City has water rights to 33,548 acre-feet per year.[17] Even if the amount transported by the District on behalf of United is included, this still is only slightly more than half of the City's water rights.[18] The District claims that, if anything, it is dependent on the City because the City accounts for 80 to 90% of the water pumped by the District.[19]

The District also notes that the City acquires water from District #2 and that, while the District coordinates the delivery of District #2's water to the City, it does so only at the City's request. It claims it is under no contractual obligation to do so and could give up that control if the City requested; but, the City has not made such a request—likely because it would be inefficient to not coordinate water delivery. The District also disputes the City's lack of viable alternatives for water service, alleging that the evidence in the record does not establish that it is cost-prohibitive for the City to build its own pumping station and water delivery system. Rather, the evidence shows that the City has not done any analysis to determine the actual cost of building alternate delivery systems, and that the City merely believes it would be expensive. Further, the District notes that the City voluntarily chose, in the last 10-15 years, to not develop alternate delivery systems even though it cultivated new water supplies from United and District #2.

After considering the parties' arguments and evidence, the ALJ finds that there *is* disparate bargaining power between the District and the City; specifically, the City has less bargaining power than the District. In regard to the underlying factual dispute about the amount of water that the District provides for the City, the ALJ concludes that the evidence supports the City's contention that 72% of its raw water needs are currently met by the District. In disputing this, the District simply focuses on the City's "water rights" and not its actual usage. However, the City's evidence focused

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[17] City Ex. 1, at 4-5.

[18] If the water from United is included, the District transports a total of 18,980 acre-feet per year for the City, roughly 57% of the City's 33,548 acre-feet of water rights.

[19] Tr. Vol. 1, 57:20-22; 146:5-8 (cites to the transcript are in the format of 'page:line' and include the volume number). There is some discrepancy in the actual percentage, possibly based on the different time periods measured.

on its actual raw water needs and, at this point, the uncontroverted evidence is that the District delivers approximately 72% of the raw water used by the City. Beyond this underlying factual issue, the Commission's rules identify a number of elements to consider when evaluating the disparate bargaining power of the parties. Those elements include the purchaser's alternative means, alternative costs, environmental impact, regulatory issues, and problems of obtaining alternative water service. In reviewing these factors, it certainly appears that the City has less bargaining power than the District.

First, the ALJ concludes that the City currently has no realistic alternate means to obtain wholesale water service. All water for the City's residents is deposited into and drawn from the City's reservoir. Only the District and District #2 have the infrastructure for transporting water into the reservoir.[20] District #2's pipeline is not large enough by itself to meet the City's needs, however.[21] While the City could purchase water elsewhere, it lacks the means to transport the water for treatment and subsequent use by the City's residents. Moreover, there are no other entities that can provide this service adequately. Even the District's own operations manager, Ray Cook, conceded as much when he provided no viable alternatives at the hearing for how the City could obtain water for use by its residents.[22] While it is possible for the City to build a pumping plant, pipeline, or water treatment facilities, such would be time-consuming and would require significant regulatory approvals. At best, it would take at least a year to complete any such facilities.[23] Given this, it is apparent that the City has no alternate means to obtain the needed water at this time.

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[20] City Ex. 1, at 7-8 and 13-14.

[21] Tr. Vol. 1, 228:4-8 and Vol. 2, 302:6-19.

[22] Tr. Vol. 1, 140:11-19. When pressed further as to what the City could do if it chose to not obtain water from the District, Mr. Cook stated "Don't have any idea; maybe get them a bunch of trucks and start hauling it." Tr. Vol. 1, 141:16-17. Clearly, this is not a viable option for the City to obtain the needed water for its residents, and the ALJ doubts that the witness even intended it to be a serious response.

[23] Tr. Vol. 1, 229:12 - 230:10; District Ex. 4, at 41-42.

Moreover, the cost for the City to build its own system would be significant. While the City did not establish the precise amount of such an undertaking, all the witnesses conceded that it would be expensive.[24] The City is building a new water treatment plant, to be completed in 2004, designed for a different part of the City and the total cost for that new facility will be roughly $19 million.[25] In this case, the City pays only an extra $62,000 per year because of the District's rate increase;[26] therefore, it is not likely to be cost effective for the City to build additional facilities at a cost of millions of dollars simply to avoid an extra $62,000 per year.

The parties did not present evidence regarding the environmental impact of obtaining water through alternate means and the ALJ cannot speculate to that. But, the evidence does indicate that the City would face regulatory hurdles in building and constructing the necessary facilities and obtaining the needed permits or certificates.[27]

Finally, while the ALJ agrees that the City and the District are somewhat mutually dependent on each another, the ALJ also concludes that the City is *more* dependent on the District, thus resulting in disparate bargaining power. The District derives a significant portion of its revenues from the City, but also has significant cash holdings in reserve and could probably trim its operations and continue to provide service to its other customers indefinitely if the City were no longer a customer. So, the impact on the District would be lower revenues and likely higher rates for its other customers. On the other hand, the City *must* have water delivery for its citizens and, because there are no alternate sources that can meet the City's needs, it could not simply choose to not rely on the

[24] Tr. Vol. 1, 140:20 - 141:3; 142:20 - 143:5; 224:9 - 225:4; City Ex. 1, at 15.

[25] City Ex. 1, at 15. The new water treatment plant is expected to handle 8 MGD (compared to the existing plant's capacity of 39 MGD) and is not going to supplant nor lessen the City's need for its existing plant.

[26] Tr. Vol. 1, 190:6-17.

[27] Tr. Vol. 1, 229:12 - 230:10.

District for water delivery.[28] The consequences if it did would be far-reaching, both from the economic impact on its citizens and the public health concerns that would arise from the lack of clean, potable water.[29] Put simply, the City needs the District more than the District needs the City.

Merely finding that the District and the City have disparate bargaining power does not end the analysis. Next there must be a determination of whether the District's actions reflect an *abuse* of monopoly power. This is where the other three factors asserted by the City become relevant.

2. Has the District Failed to Demonstrate Changed Conditions That Would Justify the Increased Rates?

The City argues that there is no reasonable justification for the District's rate increase, and specifically no changed conditions to support it. The District's reason for the increase is that it has incurred "increased operational expenses" and is suffering losses in providing service to the City. The City disputes this, arguing that the District is not actually suffering losses but instead has simply changed its accounting methods to no longer offset certain income it receives—primarily earned interest and other investment income—against operational expenses. Instead, these other sources of income have gone into specially-designated reserve accounts. Because of this, the District's operational expenses now appear to be greater than revenues, resulting in an apparent loss to the District. But, the City contends, if all of the District's income is offset against its expenses, the District has net gains and actually has strengthened its financial position over the last few years.

To support its contention, the City points out that during the time period that the District's operational expenses have supposedly increased and it is suffering operating losses, it also has increased its retained earnings, cash and cash equivalents, and long-term investments.[30] Further, the

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[28] Tr. Vol. 1, 94:11-23.

[29] Tr. Vol. 1, 97:3-18.

[30] City Ex. 2, at 10-11.

District has had positive cash flow every year since 1996 and increased its assets 124% between 1996 and 2001.[31]

The City acknowledges that the District's calculations purport to show operational losses in recent years, but argues that such calculations are inherently flawed and unreliable because the District has not abided by accepted accounting methods. For example, the District includes depreciation as an operational expense, even though the Commission's rules disallow such a practice under the cash-based method of ratemaking.[32] Also, the District has established a capital account to maintain a cash reserve for capital improvements and repairs; but, the District anticipates paying for retirement and hospitalization benefits for its employees out of the capital account. The City asserts that such would be an improper use of a capital account and reveals the District's lack of understanding regarding the proper categorization of operational, non-operational, and capital expenses. The City asserts that it cannot properly determine the reliability of the District's accounting records without a detailed audit or cost of service study, neither of which have been done. Given the alleged accounting inconsistencies cited above, the City argues that the District's assertion of increased operational expenses is simply not reliable.

Ultimately, the City's position is summed up in this sentence taken from its written closing argument: "[n]o matter how you slice the District's total financial pie, it has had, and will continue to have, excess revenues over expenses."[33] Therefore, the City asserts that the District's claims of increased operational expenses and operational losses must be disregarded and there is no justification for increased rates.

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[31] City Ex. 2, at 12-13, and Table I.

[32] The District purports to use a cash-based method of calculating rates but does not comply with the Commission's rules regarding this method for rate-setting. However, as the City concedes, the District has never been subject to a rate-setting proceeding and is not required to comply with the Commission's rate-setting regulations. *City of McAllen's Initial Brief*, at 20.

[33] *City of McAllen's Initial Brief*, at 15.

The District responds by arguing that the City is seeking to have its rates subsidized by the District's revenues from non-operating sources, without regard to the actual operating expenses incurred by the District in providing water to the City. The District's evidence reflects that it has had negative operating income each year since 1996, and in four of those years the operating losses were greater than $100,000 per year.[34] The District claims that such losses are the result of increased expenses—primarily wages and power costs—during a time period in which rates have remained unchanged.[35] The District notes that even the City's own expert conceded that the District's operating expenses have increased in the last few years while rates stayed the same.[36]

As for the District's increase in retained earnings (and cash and cash equivalents), the District asserts that 50% of that increase is due to revenue received from the City for condemnation awards (money paid by the City for condemned property of the District) and *not* from operating revenues.[37] In fact, the District has received approximately $1.5 million from the City for condemnation awards in the past few years.[38] The District concedes that its non-operating revenues have allowed it to build up cash and cash equivalents in reserve, but argues that such amounts are specially designated for needed capital expenditures and cannot be used for operations.[39] And, the District points out, such accounts need to be large and growing because the District has a policy against issuing bonds or incurring similar debt for capital projects.[40]

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[34] City Ex. 1, attachment 9 (for the convenience of the Commission, the ALJ has copied and attached to this PFD, as attachment 1, the nine pages of financial documents submitted by the District in support of the rate increase).

[35] District Ex. 5, at 13.

[36] Tr. Vol. 1, 87:1-22.

[37] District Ex. 6, at 13.

[38] District Ex. 5, at 13-14.

[39] *Id.*

[40] District Ex. 5, at 4.

After considering the parties' arguments, the ALJ concludes that the District has demonstrated changed conditions justifying a change in rates. While the financial data could have been clearer and more detailed, the ALJ finds that the evidence clearly establishes that the District's operating expenses have increased over the last few years while its rates to the City have remained unchanged. Even the City's own expert conceded this.[41] The City disregards this, arguing that because the District is a single "system" its entire financial picture should be reviewed to determine if the rate increase is justified. While this may be true in a full rate-setting case, the ALJ does not agree that this analysis must be conducted at this stage of this proceeding. Rather, the focus at this stage is whether the protested rate is adverse to the public interest and, more specifically, whether the rate increase reflects an abuse of monopoly power. Only if that is established is it appropriate to conduct a hearing to fully analyze the District's entire financial picture for rate-setting purposes.

In determining if there are "changed conditions" justifying a change in rates, the ALJ finds it appropriate to look at the operating expenses of the District and the percentage of operations attributed to providing water to the City. In this case, the evidence establishes that in 2001 the City used approximately 80% of the water delivered by the District, but paid only 61% of the operating expenses.[42] This imbalance has existed for a few years, during which the City has regularly paid a lesser percentage of pumping costs than its usage would otherwise dictate.[43] While there may be a rationale for this (*e.g.*, because of efficiencies, it may be cheaper *pro rata* to pump water for the City), no justification has been offered. The evidence also shows that the District's operating expenses have increased in recent years, rising nearly 31% since 1997 and 12% between 1999 and 2001 (roughly the time between when the Contract was ratified and when the District raised rates).[44] In fact, the District's labor and fuel expenses alone rose by over $100,000 between 1997 and 2001.

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[41] Tr. Vol. 1, 87:1-12.

[42] Tr. Vol. 1, 146:5-9; City Ex. 1, attachment 9.

[43] See City Ex. 1, attachment 9, at 3rd page (pages not numbered).

[44] *Id.*

The ALJ also is not persuaded that the District's accounting methods are completely unreliable. While it is true that the District has included depreciation as an operating expense, contrary to the Commission's rules regarding the cash method of rate-setting, this indicates nothing more than the District's methods for setting rates might be inappropriate in a full-fledged rate case. In itself, it certainly does not indicate that there are no changed conditions justifying a rate increase. The evidence reflects that the District has not changed its accounting or rate-setting methods at any time relevant to this case, so any improprieties in rate-setting have been consistently applied throughout the time period that the City and the District have negotiated rates in the past.

Moreover, the depreciation amounts included are not significant enough to account for the increase in the District's operating expenses during the last six years. For example, the District included $58,837 worth of depreciation in operating expenses in 1997 and $90,000 worth in 2001. This is an increase of $31,163 in annual depreciation expense during that time period. However, during that same period, the District's overall reported annual expenses rose by over $175,000. So, even subtracting the effect of depreciation that arguably should not be included as an expense, the District's costs still increased significantly. It is this increase in expenses, along with the continued divergence between the revenues received from the City and the pumping costs to provide water to the City, that the District relies on as a changed condition justifying the rate increase.

The ALJ generally agrees with the District's arguments on this issue. It is intuitive that rates are based to some degree on operating expenses. When operating expenses increase, it is to be expected that rates will follow. An increase in operating expenses is a changed condition that would justify an increase in rates.

Finally, the ALJ agrees that the District has increased its financial strength on the basis of non-operating revenues (including the receipt of nearly $1.5 million from the City for condemnation awards in the past few years) but notes that the City did not delve into these revenues to establish any reason why the City should benefit from them. It hardly seems justified for the City to argue that

it should benefit from the proceeds on property condemned by it. Moreover, the mere fact that the District's financial position has strengthened does not indicate that there are no changed conditions justifying a rate increase. In fact, when one looks at the overall operations of the District, it is clear that its overall positive cash flow has decreased significantly in the last couple of years. In 1997 and 1998, the District had positive cash flow of approximately $151,000 each year; in 1999, its positive cash flow was $81,000 and, in 2000, it was nearly $411,000.[45] However, in 2001, it was only $16,000 and in 2002 it was projected to be only $12,000. The mere fact that the District is still "making money" overall does not establish that there are no changed conditions justifying a rate increase and that the rate increase is an abuse of monopoly power. Rather, when looking at whether conditions have changed, the ALJ concludes that a large decrease in positive cash flow is a changed condition that could also justify a change in rates.

3. Has the District Changed the Computation of the Revenue Requirement or Rate from One Methodology to Another?

In 2001, the District created two cash reserve accounts, a shortfall account intended to cover operational shortfalls and emergency expenditures, and a capital account intended to cover capital improvement and maintenance expenditures.[46] The City alleges that the creation of these accounts and the resulting financial effects constitute a change in the methodology for calculation of the District's rate and/or revenue requirement. Before the creation of these accounts, the City alleges that the District's operational expenses were balanced by other non-operating income. Since the creation of the accounts, though, the District is allegedly required to divert non-operating income into the accounts to fund them. The City argues that this is the real reason that the District has raised its rates. The City also argues that the District has offered no justified reason for establishing the two cash reserve accounts and has failed to properly use the accounts in the manner they are designated.

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[45] Positive cash flow appears particularly high in 2000. During this year, the District reported a net gain of $200,000 for the sale of condemned property thus increasing positive cash flow significantly. Tr. Vol. 1, 103:8-24.

[46] City Ex. 21.

The District responds by pointing out that it is a wise management practice to place funds in emergency and capital accounts. Moreover, because of bad past experience with bonds, the District has a policy to not issue bonds for capital improvements.[47] Therefore, the District's manager set aside significant amounts for anticipated capital improvements to the system, and the District's Board of Directors found it appropriate to create specially-designated accounts for such funds. The District points out that its operating losses have been occurring over the last six years—well prior to the development of the shortfall and capital accounts, so the mere creation of such accounts is not the cause for the change in rates. Further, while the specific accounts were created in the last two years, the District has accumulated capital reserves for many years and funds held in investments in the past have served as operational and capital improvement reserves anyway.[48]

The ALJ concludes that the District has not changed the computation of the revenue requirement or rate from one methodology to another. While the evidence raises some questions as to whether the District is applying an appropriate methodology for calculating rates, the evidence *is clear* that the District hasn't actually changed its methodology in any significant way in at least the last six years.[49] In fact, City's expert, Mr. Pous, highlights this fact when he notes that the District has allegedly improperly been including depreciation as an operating expense and excluding interest income when calculating net operating income for a number of years.[50]

Also, the mere fact that the District created new accounts specifically designed for operational and cash reserves does not mean that the District changed its rate-setting methodology. As the District points out, it has accumulated capital reserves for many years and funds held in investments in the past have been intended as operational and capital improvement reserves anyway.

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[47] District Ex. 5, at 4.

[48] District Ex. 5, at 13-14; City Ex. 21.

[49] District Ex. 5, at 14.

[50] City Ex. 2, at 12.

While the creation of specific accounts may have formalized this practice, there is no evidence that the District's method of calculating rates has been impacted by such or that rates would be different if the District had not formally created the reserve accounts.[51] From reviewing the evidence and arguments, the ALJ simply does not agree that the creation of the reserve accounts constitutes a change in the District's methodology for calculating rates or revenue requirements.

Moreover, the reserve accounts were created *after* the rate increase was implemented. The City was notified of the rate increase on July 24, 2001, and the reserve accounts were not created until November 14, 2001. Therefore, it is hard to see how the financial information on which the rate increase was based could have been affected by changes that were not passed until months after the rate increase was decided. The District did not rely on projections of future operational expenses as the sole basis for its change in rates; rather, the District relied on the assertion that it had been experiencing operational losses for a number of years and had to rectify this. In this situation, where any alleged accounting changes do not tie directly to the District's basis for the rate increase, the ALJ sees no relevance in the changes. As such, the ALJ does not find merit to the City's arguments regarding the reserve accounts created by the District, nor does the ALJ construe the creation of these reserve accounts as a change in the methodology used by the District for setting rates.

4. Is the Proposed Rate Increase Unreasonably Preferential, Prejudicial, or Discriminatory?

Under the Commission's rules, a protested rate may be found to be adverse to the public interest if it "is unreasonably preferential, prejudicial, or discriminatory, compared to the *wholesale* rates the seller charges other *wholesale* customers."[52] However, the City does not rely on this provision because the District has no other wholesale customers to whom the City could make a

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[51] To the extent that the City alleges that existing reserves could be used to offset operational expenses, this is simply a request that the City's rates be subsidized and the ALJ sees no legal basis for such a contention in the context of this proceeding - which is not at a rate-making stage where other recurring sources of income might become relevant.

[52] 30 TEX. ADMIN. CODE § 291.133(a)(4) (emphasis added).

comparison as the rule requires. Instead, the City argues that the Commission should look at whether the District's rates to the City are unreasonably preferential, prejudicial, or discriminatory in regard to the District's *retail* customers. Because the factors identified by the Commission to be used for determining whether a supplier has abused its monopoly power is not exclusive nor exhaustive,[53] the ALJ finds it appropriate to at least consider the City's contentions.

The City argues that the District, in raising rates, has discriminated between rate classes in an unreasonable manner. The City points out that the District raised its rates in 2001 only in regard to the City and not other customers. While conceding that the District raised rates in 2000 for its other customers, the City argues that the percentage increase to the City in 2001 was greater than the 2000 increases to the other customers. Specifically, the City notes that its rates were raised by 14.28% and the District's retail rates were raised by between 5.6% and 13.64%, depending on the type of charge. The City contends that it is not in the public interest to allow the District to raise rates to its largest customer (the City) in order to subsidize other customer classes. The City alleges this is more evidence of the District's abuse of its monopoly power. Further, the City argues that this is a breach of the Contract, wherein rates must be raised on an equivalent basis to all customers.

In response, the District contends that the Commission should not even consider the City's assertions because the Commission's rules only allow for a comparison of wholesale rates in determining whether a rate increase is preferential, prejudicial, or discriminatory. Because the District has retail customers only, other than the City, the District argues that no comparison can be made. Moreover, the District points out that the Contract has a provision regarding the equality of rates and asserts that the City could sue for breach of contract if it truly believed the District had not raised rates in a fair manner across its different customer classes. The District contends that it attempted to raise rates relatively equally but that such was not always feasible; also, rounding efforts resulted in some discrepancy between the percentages of the different rate increases.

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[53] 30 TEX. ADMIN. CODE § 291.133(a)(3).

While the evidence is clear that not all customer classes had their rates raised by an equivalent percentage, the ALJ does not find the rate increase to be unreasonably preferential, prejudicial, or discriminatory. First, the ALJ notes that the District raised rates for all customers, except for the City, in 2000. The City's rates were not actually raised until 2001, after the other customers had already been paying increased rates for a year. This alone somewhat offsets the fact that the City's increase was greater, on a percentage basis, than the increase to other customers. Moreover, the percentage differences are not that significant. The District essentially has four different types of charges for service: a yard rate, a flat rate, irrigation rate, and the wholesale rate (to the City only). In 2000, the yard rate was increased by 13.64%, the flat rate was increased by 12.5%, the irrigation rate was raised by 5.6%, and the City's rate remained unchanged. In 2001, the City's rate increased 14.28%.[54] Those customers that pay the irrigation rate also pay the flat rate for service.[55] Therefore, their percentage increase is really somewhere between 5.6% and 12.5%. While the percentage increase for the City is greater than for the retail customers, the discrepancies in the percentages are not so significant as to be *unreasonably* prejudicial, preferential or discriminatory.

The ALJ also gives little credence to the City's contention that it is subsidizing the District's retail customers. The evidence establishes that the City has been paying less, percentage-wise, of the operating revenues than its usage of water would dictate (for 2001, the City accounted for 80% of the water pumped by the District, but paid only 61% of the pumping costs). If anything, the evidence supports the conclusion that the retail customers have been subsidizing the City. While the City potentially may have grounds for a breach of contract action against the District in regard to the inequality of the increase percentages, the evidence does not support a conclusion that the increase has been implemented in an unreasonably prejudicial, preferential or discriminatory manner so as to be considered adverse to the public interest.

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[54] District Ex. 5, attachment RC-3; Tr. Vol. 1, 203 - 205 and 248:12-16.

[55] Tr. Vol. 1, 198:17-21.

VI. Conclusion

After considering the evidence, arguments, and legal authorities presented by the parties, the ALJ concludes that the protested rate is not adverse to the public interest. Although the ALJ finds that the City and the District have disparate bargaining power, the ALJ does not find that the protested rate evidences an abuse of monopoly power by the District in its provision of water service to the City. Although the District's accounting records could have been better presented, the evidence indicates that (1) the District's methodology for setting rates has not changed, (2) the increase in rates is rationally based on higher operating expenses to the District in providing water service, and (3) the rates are applied in a manner that is not unreasonably prejudicial, preferential, or discriminatory. Therefore, the ALJ recommends that the City's appeal be denied.

As a final note, the ALJ finds it appropriate to address transcript costs. In an initial prehearing order, the ALJ instructed the City to pay the costs associated with the preparation of the transcript and recording of hearings, subject to later allocation. The parties have not briefed the issue of reallocation of transcript costs nor has the City specifically requested to be reimbursed for any costs it has incurred. In light of the ALJ's recommendation that the City's appeal be denied, the ALJ does not find any basis for reallocating costs. Therefore, the ALJ recommends that the Commission order the parties to bear the costs incurred by them and provide for no reallocation or reimbursement.

Issued this 31st day of January, 2003.

CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER Denying the City of McAllen's Appeal of the Wholesale Water Rate Increase of Hidalgo County Water Improvement District No. 3; SOAH Docket No. 582-02-2470; TCEQ Docket No. 2001-1583-UCR

On April 16, 2003, the Texas Commission on Environmental Quality (Commission) considered the City of McAllen's Appeal of the Wholesale Water Rate Increase of Hidalgo County Water Improvement District No. 3 (the Appeal). The matter was presented to the Commission with a Proposal for Decision by Craig R. Bennett, an Administrative Law Judge with the State Office of Administrative Hearings, who conducted a contested case hearing concerning the Appeal. After considering the ALJ's Proposal for Decision and the evidence and arguments presented, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

Procedural

1. The City of McAllen (the City) is a municipal corporation located in Hidalgo County, Texas. The City provides retail water utility service to approximately 120,000 people within the limits of the City.
2. Hidalgo County Water Improvement District No. 3 (the District) is a conservation and reclamation district created under authority granted by Article XVI, Section 59 of the Texas Constitution. The District is a political subdivision of the State of Texas.

3. On October 22, 2001, the City filed a petition with the Commission appealing the wholesale water and transportation rates charged to the City by the District.

4. The City's petition was declared administratively complete on November 14, 2001.

5. The City's petition was referred to the State Office of Administrative Hearings (SOAH) on December 31, 2001.

6. SOAH Administrative Law Judge (ALJ) Craig R. Bennett conducted a preliminary hearing in this case on May 23, 2002. At that time, the City withdrew its request for interim rates.

7. At the preliminary hearing, the following appeared and were identified as parties to this case: (1) the City (represented by Georgia Crump and Art Rodriguez, attorneys), (2) the District (represented by Glenn Jarvis, attorney), (3) the Executive Director (ED) of the Commission (represented by John Deering and Geoffrey Kirshbaum, staff attorneys), and the Public Interest Counsel of the Commission (represented by Mary Alice Boehm, attorney).

8. The hearing on the merits in this case convened on October 3 and 4, 2002, at the SOAH Hearing Facility, 300 West 15th Street, Austin, Texas, with ALJ Craig R. Bennett presiding.

9. The hearing record closed on December 4, 2002, with the filing of the parties' final written arguments. All parties participated in the hearing and submitted written closing arguments except for the Public Interest Counsel of the Commission.

Underlying Background Facts

10. The District has provided water utility service to the City since the 1940s.

11. Between 1983 and 1995, the District's water rates to the City did not change.

12. In 1995, the District's rates were raised pursuant to an agreement reached with the City.

13. The contract reflecting the agreement referenced in the preceding finding of fact was not ratified by all parties until May 1999, when the District and the City finalized the *Permanent Water Supply and Delivery Contract* (the Contract), which applies to this dispute.

14. Under the Contract, the City was to pay $0.095 per 1,000 gallons of water diverted and delivered by the District under Certificate of Adjudication Nos. 23-848, 23-848A, and 23-848B and $0.07 per 1,000 gallons for other water transported for the City by the District.

15. The Contract remains in effect and has not been superceded by any other agreements.

16. The Contract does not have specific provisions for calculating rate adjustments, allowing the District to make rate adjustments as necessary in its own determination; however, under the Contract, the City retains any appeal rights it has under the law.

17. In 2000, the District raised its rates for all customers and notified the City of a rate increase of two cents per 1,000 gallons for water delivery.

18. The City disputed the rate increase proposed in 2000, and the District rescinded it as to the City but kept it in place for all other customers.

19. In 2001, the District again notified the City that it would raise rates. The proposed rate increase this time was one cent per 1,000 gallons, to $0.105 for water provided and delivered by the District and $0.08 for water simply transported by the District.

20. The City challenged the 2001 rate increase, but this time the District did not rescind it, leading to this appeal by the City.

21. Under the Contract, the District directly supplies the City with 13,980 acre-feet of water per year, and delivers approximately 5,000 acre-feet more per year from United Irrigation District (United).

22. Combined, the amounts transported and delivered by the District constitute approximately 72% of the City's raw water supply needs.

23. The District manages the delivery of all raw water into the City's reservoir (Boeye Reservoir), which includes the amount that it delivers and the amount delivered by Hidalgo County Irrigation District No. 2 (District No. 2) through a pipeline emptying into the reservoir.

24. The City obtains all of its raw water supply from the Rio Grande, and the water is transported to the Boeye Reservoir by either the District or District No. 2.

25. The City does not own any river pumping facilities or canals to transport raw water from the Rio Grande to Boeye Reservoir, but relies solely on the District and District No. 2 for transportation services.

26. The City currently has only one water treatment plant with a treatment capacity of 39 million gallons per day. All of the raw water currently treated by the City for retail sale must first be delivered into the Boeye Reservoir and then is treated at this one water treatment plant.

The Disparate Bargaining Power of the Parties

27.-34. [Deleted with the concurrence of the ALJ.]

Changed Conditions Justifying a Rate Increase

35. In the last six years, the City has regularly paid a lesser percentage of pumping costs than its usage would otherwise dictate; in 2001 the City used approximately 80% of the water delivered by the District, but paid for only 61% of the operating expenses.

36. The District's operating expenses have been increasing during the last five years, rising nearly 31% (an increase of over $175,000) between 1997 and 2001.

37. Between 1999 and 2001 (the period between the time the Contract was ratified and the time the District implemented the rate increase to the City), the District's operating expenses rose 12%.

38. Between 1997 and 2001, the District's labor and fuel expenses alone rose by over $100,000.

39. In 1997 and 1998, the District had positive cash flow of approximately $151,000 each year; in 1999, its positive cash flow was $81,000 and, in 2000, it was nearly $411,000.

40. In 2001, the District's positive cash flow was down to only $16,000 and for 2002 it was projected to be only $12,000 without the rate increase to the City.

41. The District has reasonably demonstrated changed conditions that are the basis for the change in rates.

The District's Methodology for Rate-Setting

42. The District purports to use a cash method for calculating revenue requirements and/or setting rates.

43. The District has included depreciation as an operating expense and excluded interest income when calculating net operating income for at least the last six years.

44. On November 14, 2001, the District created two cash reserve accounts, a shortfall account intended to cover operational shortfalls and emergency expenditures, and a capital account intended to cover capital improvement and maintenance expenditures.

45. The reserve accounts referenced in the preceding finding of fact were created approximately four months after the City was notified of the District's proposed rate increase.