

46. 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.
47. The District has not changed its accounting or rate-setting methods in the last six years.
48. In establishing the proposed rate increase to the City, the District did not change the computation of its revenue requirement or rate from one methodology to another.

The Equality of the District's Rate Increase

49. The District essentially has four different types of charges for service: a yard rate, a flat rate, an irrigation rate, and a wholesale rate.
50. The City is the District's only wholesale water utility customer.
51. Effective September 1, 2000, the District's rates were changed as follows: 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 wholesale rate was unchanged.
52. Customers that pay the irrigation rate also pay the flat rate for service and, therefore, their overall rates increased by between 5.6% and 12.5%.
53. Effective September 1, 2001, the rates charged by the District for wholesale water utility service were raised by 14.28%.
54. The District's rate increases in 2000 and 2001 were not unreasonably preferential, prejudicial or discriminatory as between classes of ratepayers.
55. The District's rate increase to the City in 2001 does not reflect an abuse of monopoly power by the District.

CONCLUSIONS OF LAW

1. The City's petition (the Appeal) was filed under the provisions of TEX. WATER CODE ANN. (Texas Water Code) §§ 11.041, 12.013, and 13.043(f) (West 2000), and Chapter 291 of the Commission's rules.
2. The Commission has jurisdiction to consider and rule on the City's appeal pursuant to chapters 11 and 12 of the Texas Water Code.
3. SOAH has jurisdiction over matters related to the hearing in this case. More specifically, SOAH ALJs have authority to conduct a hearing and issue a proposal for decision with Findings of Fact and Conclusions of Law in contested cases referred by the Commission, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
4. The Appeal was processed and the proceedings described herein were conducted in accordance with applicable law and the regulations of the Commission (specifically 30 TEX. ADMIN. CODE ch. 291) and SOAH (specifically 1 TEX. ADMIN. CODE ch. 155), and all applicable procedural requirements relative to notice, the hearing, and due process of law have been met.
5. As required by TEX. GOV'T CODE §§ 2001.051 and 2001.052, 1 TEX. ADMIN. CODE § 155.27, and 30 TEX. ADMIN. CODE § 1.12, the parties were properly notified of the hearing on the Appeal.
6. The Commission's rules specifically require a bifurcated hearing process for appeals from rates based on written contracts. 30 TEX. ADMIN. CODE §§ 291.131(b), 291.132, and 291.134.

7. The initial hearing on an appeal is conducted for the purpose of determining whether the protested rate adversely affects the public interest. 30 TEX. ADMIN. CODE §§ 291.131(b), 291.132, and 291.134.
8. The City bears the burden of proving that the protested rate adversely affects the public interest. 30 TEX. ADMIN. CODE § 291.136.
9. The Commission has by rule, specifically at 30 TEX. ADMIN. CODE § 291.133(a), set out the criteria for determining whether a protested rate adversely affects the public interest.
10. The determination of whether the proposed rate is adverse to the public interest is not to be decided based on an analysis of the seller's cost of service. 30 TEX. ADMIN. CODE § 291.133(b).
11. The City has failed to demonstrate by a preponderance of the evidence that the District's proposed rate is adverse to the public interest.

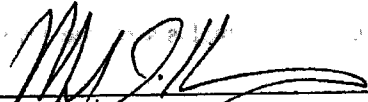
NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The City of McAllen's Appeal of the Wholesale Water Rate Increase of Hidalgo County Water Improvement District No. 3 is denied.
2. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief not expressly granted herein, are hereby denied for want of merit.

3. The Chief Clerk of the Commission shall forward a copy of this Order to all parties.
4. If any provision, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of such shall not affect the validity of the remaining portions of the Order.
5. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE §2001.144.

Issue Date: **APR 23 2003**

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY


Robert J. Huston, Chairman

Buddy Garcia, *Chairman*
 Larry R. Soward, *Commissioner*
 Bryan W. Shaw, Ph.D., *Commissioner*
 Mark R. Vickery, P.G., *Executive Director*



COPY
 RECEIVED
 NOV 12 2008
 Lloyd Gosselink

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 6, 2008

TO: Persons on the attached mailing list.

RE: City of Royse City
 CCN No. 10064; TCEQ Docket No. 2007-0238-UCR; SOAH Docket No. 582-07-2049

This letter is your notice that the Texas Commission on Environmental Quality (TCEQ) executive director (ED) has dismissed the above-named petition. According to 30 Texas Administrative Code (TAC) Section 50.135 the dismissal became effective on the date the ED signed the dismissal. A copy of the dismissal is enclosed and cites the effective date.

You may file a motion to overturn with the chief clerk. A motion to overturn is a request for the commission to review the TCEQ ED's dismissal of the petition. Any motion must explain why the commission should review the TCEQ executive director's action. According to 30 TAC Section 50.139 an action by the ED is not affected by a motion to overturn filed under this section unless expressly ordered by the commission.

A motion to overturn must be received by the chief clerk within 23 days after the date of this letter. An original and 11 copies of a motion must be filed with the chief clerk in person, or by mail to the chief clerk's address on the attached mailing list. On the same day the motion is transmitted to the chief clerk, please provide copies to the applicant, the ED's attorney, and the Public Interest Counsel at the addresses listed on the attached mailing list. If a motion to overturn is not acted on by the commission within 45 days after the date of this letter, then the motion shall be deemed overruled.

You may also request judicial review of the ED's dismissal. According to Texas Water Code Section 5.351 a person affected by the ED's dismissal must file a petition appealing the ED's dismissal in Travis County district court within 30 days after the effective date of the dismissal. Even if you request judicial review, you still must exhaust your administrative remedies, which includes filing a motion to overturn in accordance with the previous paragraphs.

Individual members of the public may seek further information by calling the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040.

Sincerely,

LaDonna Castañuela
 Chief Clerk

LDC/ms

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

RECEIVED

NOV 12 2003

Lloyd Gosselink



THE STATE OF TEXAS
COUNTY OF TRAVIS

I hereby certify that this is a true and correct copy of a Texas Commission on Environmental Quality document, which is filed in the permanent records of the Commission. Given under my hand and the seal of office on

Edna P. P. P. NOV 06 2008

LaDonna Castanuela, Chief Clerk
Texas Commission on Environmental Quality

SOAH DOCKET NO. 582-07-2049
TCEQ DOCKET NO. 2007-0238-UCR
APPLICATION NO. 35610-M

PETITION OF BHP WATER SUPPLY CORPORATION (WSC), CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) NO. 10064, APPEALING THE WHOLESALE WATER RATE INCREASE OF THE CITY OF ROYSE CITY, TEXAS AND REQUEST FOR INTERIM RATES, APPLICATION NO. 35610-M

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

ORDER

A petition by BHP Water Supply Corporation (WSC) (Petitioner) to review the wholesale water rate increase of the City of Royse City and to request interim rates, was presented to the Executive Director (ED) of the Texas Commission on Environmental Quality (Commission) for approval pursuant to Section 13.043(f) of the Texas Water Code (Code) and Commission Rule 291.41(f).

On February 21, 2007, the Petitioner filed an appeal with the Commission, which was assigned Application No. 35610-M. The appeal was referred to the State Office of Administrative Hearings (SOAH) for a hearing. The Petitioner also served a copy of the Petition on the City of Royse City. Service of the Petition complied with the service requirements of Title 30, Section 291.130 of the Texas Administrative Code.

The Honorable Craig R. Bennett, an administrative law judge (ALJ) of the State Office of Administrative Hearings (SOAH), conducted a preliminary hearing on June 5, 2007, in Austin, Texas. The ALJ took jurisdiction over the case and designated the following parties: the Petitioner; the ED; the City; and the Office of Public Interest Counsel of the Commission. The

case was abated for settlement negotiations on July 25, 2007. The abatement was lifted on March 3, 2008, and a procedural schedule was set on March 24, 2008. On August 1, 2008, the parties met for mediation, during which all issues were resolved. On September 11, 2008, the ED filed a motion to dismiss stating that the parties had settled the matter and wished to have the case dismissed from the SOAH docket. On September 12, 2008, the ALJ dismissed the matter from SOAH's docket and remanded it to the ED, pursuant to Title 30, section 80.101 of the Texas Administrative Code.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. The Petition of BHP WSC against the City of Royse City to compel wholesale water service at just, reasonable, and non-discriminatory rates and terms in Hunt County, Texas, is hereby dismissed.
2. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.
3. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date: OCT 28 2008

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY


For the Commission

MAILING LIST
for
City of Royse City
TCEQ Docket No. 2007-0238-UCR; SOAH Docket No. 582-07-2049
CCN No. 10064

Leonard H. Dougal
Jackson Walker, LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701

Georgia Clump
Lloyd Gosselink
816 Congress Avenue, Suite 1900
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FOR PUBLIC INTEREST COUNSEL:

Scott Humphrey, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
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Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER

DENYING THE PETITIONS OF NAVARRO COUNTY WHOLESALE RATEPAYERS, M.E.N. WATER SUPPLY CORPORATION, RICE WATER SUPPLY CORPORATION, ANGUS WATER SUPPLY CORPORATION, CHATFIELD WATER SUPPLY CORPORATION, CORBET WATER SUPPLY CORPORATION, NAVARRO MILLS WATER SUPPLY CORPORATION, CITY OF BLOOMING GROVE, CITY OF FROST, CITY OF KERENS, AND COMMUNITY WATER COMPANY TO REVIEW THE WHOLESALE RATE INCREASE IMPOSED BY THE CITY OF CORSICANA, CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 10776, IN NAVARRO COUNTY,
TCEQ DOCKET NO. 2009-1925-UCR,
SOAH DOCKET NO. 582-10-1944

On November 2, 2011, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the petitions of Navarro County Wholesale Ratepayers (NCWR), M.E.N. Water Supply Corporation (M.E.N.), Rice Water Supply Corporation (Rice), Angus Water Supply Corporation (Angus), Chatfield Water Supply Corporation (Chatfield), Corbet Water Supply Corporation (Corbet), Navarro Mills Water Supply Corporation (Navarro Mills), the City of Blooming Grove (Blooming Grove), the City of Frost (Frost), the City of Kerens (Kerens), and Community Water Company (Community) to review a wholesale rate increase imposed by the City of Corsicana (Corsicana) under Certificate of Convenience and Necessity No. 10776 in Navarro County. A Proposal for Decision (PFD) was presented by William G. Newchurch, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the petitions on March 29, 30, and 31 and April 1 and 12, 2011, in Austin, Texas.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

Jurisdiction

1. On August 4, 2009, the City of Corsicana (Corsicana) adopted new rates for the retail and wholesale water service that it provides.
2. Each of Corsicana's ratepayers received notice of the new rates within a few days after August 4, 2009.
3. For Corsicana's wholesale customers and its inside city retail customers, the base and volumetric rates are the same.
4. Under the adopted rates, Corsicana charges each of its customers a monthly base rate that is determined by the size of the customer's meter. The base rate ranges from \$17.60 for a 5/8- or 3/4-inch meter to \$1,695.52 for a 10-inch meter. The base rate includes the first 1,000 gallons of water used in the month.
5. For water in excess of the first 1,000 gallons used in a month, Corsicana also charges tiered volumetric rates, also known as inclining-block rates. The volumetric rate is \$3.00 per 1,000 gallons for 1-10,000 gallons, \$3.15 per 1,000 gallons for 10,001-25,000 gallons, and \$3.25 per 1,000 gallons for over 25,000 gallons.
6. On November 2, 2009, NCWR, a Texas non-profit corporation, filed the Original Petition in this case with the Commission and served it on Corsicana.
7. The Original Petition did not name anyone as a petitioner or a member of NCWR that was receiving water service from Corsicana.

8. On December 1, 2009, more than 90 days after Corsicana's ratepayers received notice of the new rates from Corsicana, a First Amended Petition was filed with the Commission and served on Corsicana. It named NCWR, M.E.N., Angus, Chatfield, Corbet, Blooming Grove, Frost, Kerens, and Community as petitioners.
9. On March 3, 2010, the Commission's Chief clerk mailed notice of the first preliminary hearing to the attorneys of record for NCWR, M.E.N., Rice, Angus, Chatfield, Corbet, Navarro Mills, Blooming Grove, Frost, Kerens, Community, Corsicana, the Commission's Executive Director (ED), and the Commission's Office of Public Interest Counsel (OPIC).
10. The notice of the first preliminary hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
11. On March 31, 2010, the ALJ convened the first preliminary hearing as indicated in the notice.
12. Attorneys of record for NCWR, M.E.N., Rice, Angus, Chatfield, Corbet, Navarro Mills, Blooming Grove, Frost, Kerens, Community, Corsicana, the ED, and OPIC appeared at the preliminary hearings and the hearing on the merits.
13. On April 16, 2010, a Second Amended Petition was filed and served on Corsicana. It named NCWR as a petitioner. It also named as petitioners the following, who are collectively referred to hereafter as "Ratepayers": M.E.N., Rice, Angus, Chatfield, Corbet, Navarro Mills, Blooming Grove, Frost, Kerens, and Community.
14. The petitions asserted that the Commission had jurisdiction under statutes as set out below:

Petition	Jurisdictional Statutes
Original	TEX. WATER CODE ANN. (Water Code) §§ 11.041, 12.013 & 13.043
First Amended	Water Code §§ 11.041, 12.013 & 13.043(f)
Second Amended	Water Code §§ 11.036, 11.041, 12.013 & 13.043(f)

15. Each of the Ratepayers receives wholesale water service from Corsicana.

16. There is no evidence that NCWR receives water service from Corsicana.

17. Blooming Grove, Frost, and Kerens are political subdivisions of the state.

Parties

18. The following are the parties in this public-interest proceeding:

PARTY	REPRESENTATIVE
Ratepayers	Paul M. Terrill, III and Schuyler Marshall
Corsicana	J. Kay Trostle and Miguel Huerta
ED	Ron Olson and Dinniah C. Tadema
OPIC	Eli Martinez

19. NCWR is not admitted as a party in the public-interest proceeding.

Schedule

20. Below is a list of the major procedural events in this case:

DATE	EVENT
March 31, 2010	First preliminary hearing
April 16, 2010	Deadline to amend pleadings
May 3, 2010	Deadline to file written arguments on jurisdictional issues
May 19, 2010	Deadline to file written responses to arguments on jurisdictional issues
May 28, 2010	Second preliminary hearing
May 28, 2010	Ratepayers' motion for interim rates was denied by the ALJ
May 28, 2010	Discovery Begins
November 5, 2010	Ratepayers to prefile their direct case in writing, including all testimony and exhibits
January 14, 2011	Corsicana prefiles its direct case in writing, including all testimony and exhibits.
February 18, 2011	ED prefiles his direct case in writing, including all testimony and exhibits
February 25, 2011	Deadline to file dispositive motions
March 4, 2011	Deadline to take depositions
March 4, 2011	Deadline to file objections to and motions to strike any prefiled evidence
March 9, 2011	Deadline to file responses to dispositive motions
March 11, 2011	Deadline to supplement discovery responses
March 22, 2011	Deadline to file responses to objections and motions to strike prefiled evidence
March 24, 2011	Prehearing conference
March 29, 2011	Hearing on the merits of case begins
April 12, 2011	End of hearing on the merits
May 23, 2011	Deadline for filing initial closing arguments
June 27, 2011	Deadline for filing replies to closing arguments
August 26, 2011	Proposal for Decision (PFD) due date

Public-Interest Considerations Not Applicable In This Case

21. The Ratepayers have not claimed and there is no evidence that the protested rates impair Corsicana's ability to continue to provide service, based on Corsicana's financial integrity and operational capability.
22. The Ratepayers have not claimed and there is no evidence that the protested rates impair their ability to continue to provide service to their retail customers, based on their financial integrity and operational capability.
23. The Ratepayers have not claimed and there is no evidence that the protested rates are unreasonably preferential, prejudicial, or discriminatory, compared to the wholesale rates Corsicana charges other wholesale customers.

***Alleged Abuse of Monopoly Power
Disparate Bargaining Power of the Parties***

24. Corsicana has disparately greater bargaining power over the Ratepayers due to their lack of alternative sources of obtaining water service.
25. Corsicana has not abused its greater bargaining power.

Ratepayers' Alternative Means of Obtaining Water

26. From 1999-2001, Rice, M.E.N., and Chatfield attempted to purchase raw water from Tarrant Regional Water District (TRWD).
27. For reasons of its own, TRWD chose not to supply water to Rice, M.E.N., and Chatfield.
28. Obtaining water from TRWD instead of Corsicana is not an alternative available to the Ratepayers.

29. Corsicana did not have and did not attempt to exercise power over TRWD to deprive Rice, M.E.N., and Chatfield of an alternative water supply.
30. TRWD's choice ten years ago to not supply water to Rice, M.E.N., and Chatfield was not due to Corsicana's abuse of disparate bargaining or monopoly power.
31. M.E.N., Angus, Chatfield, Corbet, Navarro Mills, Blooming Grove, Frost, Kerens, and Community have no viable alternative to Corsicana for obtaining water.
32. Rice obtains water from the City of Ennis (Ennis) as well as Corsicana, but Ennis does not have an adequate supply to meet Rice's needs.
33. Rice has no viable alternative to Corsicana for obtaining more water than it currently uses.
34. The Ratepayers would face large practical, legal, and other obstacles to obtaining water from another source. The cost of pipelines, regulatory uncertainty due to the need to amend the regional water plan, and environmental disturbance due to construction of infrastructure would make it difficult and expensive to obtain water from another source even if one could be found.
35. Except for Blooming Grove, Kerens and Navarro Mills, the Ratepayers have contracts with Corsicana that require them to pay Corsicana for at least a minimum amount of water even if they obtain water from another source.
36. The Ratepayers have few or no alternatives to Corsicana for obtaining water.

Alternative Costs of Water

37. To the extent that the Ratepayers have alternatives, there is no evidence that the cost of those alternatives would be lower than buying water from Corsicana.

38. Rice's water supply contract with Ennis entitles Rice to purchase 2.7 MGM of water. Rice currently pays Ennis \$3.00 per 1,000 gallons with a \$6,750 monthly minimum payment. If Rice bought the maximum volume under the Ennis contract, it would pay an effective rate of \$5.50 per 1,000 gallons. That is substantially higher than Rice's effective rate with Corsicana of \$3.389 per 1,000 gallons.
39. If TRWD had been willing to sell them water in 1999, Rice, M.E.N., and Chatfield would have paid \$3.72 per 1,000 gallons.
40. Based on their average monthly consumption and taking into account all current rates, Rice pays Corsicana an average of \$3.389 per 1,000 gallons, M.E.N. pays \$3.296, and Chatfield pays \$3.33 under Corsicana current disputed rates, which is still significantly less than the \$3.72 per 1,000 gallons that they would have paid TRWD in 1999.
41. A comparison of what the Ratepayers pay Corsicana under the protested rates and what the Ratepayers pay or might have paid alternative suppliers does not indicate that Corsicana has abused its disparately greater bargaining power over the Ratepayers.

Existing Contracts Do Not Show Monopoly Abuse

42. Corsicana has entered into contracts with the Ratepayers for the capacity amounts that they sought and has not imposed a greater capacity commitment on them than they sought.
43. The term of each of the wholesale contracts is based on the wholesale customers' specific requests.
44. Except for Community's, each wholesale contract with Corsicana since the beginning has had a term of more than 20 years, which has enabled some Ratepayers to obtain financing for their systems, for example from Farmers Home Administration and USDA Rural Development.

45. Since most of Corsicana's debt is 20-year term, any contractual term beyond 20 years is solely for the benefit of the customer.
46. Since 2001, Corsicana has entered into a Standard Contract (with some modifications) with M.E.N., Angus, Chatfield, Corbet, Frost, Community, and Rice, but not with Blooming Grove, Kerens and Navarro Mills.
47. The mere use of a standard-contract form for similar customers does not demonstrate abuse or coercion by Corsicana.
48. The Standard Contract was prepared in mid-2001, and was intended for use by Corsicana when a wholesale customer requested to amend its contract.
49. The Ratepayers are member of the Texas Rural Water Association.
50. The Standard Contract was created as a joint effort by Corsicana's water-rights attorney and Rice's attorney, who was also General Counsel for the Texas Rural Water Association and generally represented the interest of its members.
51. At a June 26, 2001 meeting, the attorneys who prepared the proposed Standard Contract presented it to representatives of several of Corsicana's wholesale water customers. All of Corsicana's wholesale water customers were notified of and invited to that meeting. Among the attendants were M.E.N.'s General Manager, Dennis Donoho, and President, Paul Mitchell. There was an opportunity for the wholesale customers at that meeting to provide input into the Standard Contract.
52. The Standard Contract was not unilaterally imposed by Corsicana on its customers. Instead, it was a negotiated contract intended to balance the interests of Corsicana and its wholesale customers.

53. Each Standard Contract was altered to include the term of years and amount of water sought by each Ratepayer.
54. Section 4.03(d) of the Standard Contract contains the phrase "sole source," but it expressly contemplates that the purchaser may obtain water from other sources while paying for and taking a minimum amount of water from Corsicana.
55. Rice's ongoing purchases from Ennis, after entering into the Standard Contract with Corsicana in 2002, demonstrate that Section 4.03(d) of the Standard Contract is not a sole-source provision.
56. Section 4.03(d) of the Standard Contract is not a penalty provision. It is an alternative minimum payment provision that only applies if the purchaser obtains non-emergency water from another source.
57. Even if a Ratepayer chose to exercise its right under Section 4.03(d) of the Standard Contract to obtain water from another provider, Corsicana would remain obligated to make available to the purchaser the full amount of water specified by the Standard Contract and the Commission's rules, unless waived, would require Corsicana to maintain the capacity necessary to meet that commitment.
58. Section 4.03(d) of the Standard Contract is a reasonable provision to limit Corsicana's risk that the investment that it must make to serve the Ratepayers will be rendered worthless should the ratepayers switch to another supplier.
59. Section 4.03(d) of the Standard Contract reasonably balances between the parties to the contract the risk that a Ratepayer could choose to purchase water from a provider other than Corsicana.
60. Section 4.03(d) of the Standard Contract partially limits the Ratepayers' access to alternative suppliers, but it is not abusive.

61. The differences between the prior contracts and the Standard Contract do not show that Corsicana has abused monopoly power. Many of the changes in the Standard Contract are either beneficial to the Ratepayers or equally beneficial to them and Corsicana.
62. Corsicana's use of the Standard Contract is not abusive.
63. The existing water supply contracts between Corsicana and the Ratepayers do not show that Corsicana has abused monopoly power.

Other Disparate Bargaining Power Factors

64. There is no significant evidence concerning the other disparate-bargaining-power factors listed in 30 TEX. ADMIN. CODE (TAC) § 291.133(a)(3)(A), environmental impact and regulatory issues.

Changed Conditions on Which the Rate Change Is Based

65. Corsicana's Utility Fund is a separate accounting for Corsicana's water and sewer service revenues and expenses.
66. At the time of the rate change, Corsicana's Utility Fund had a \$1 million shortfall.
67. Corsicana does not operate on credit; therefore, it must have a cash reserve available to cover potential shortfalls and emergencies.
68. The \$1 million deficit in Corsicana's Utility Fund, regardless of its cause or causes, was a changed condition that gave Corsicana a reasonable basis for increasing its water rates.

Revenue Requirement and Rate Computation Methodology Changes

69. The evidence does not show that Corsicana changed its revenue requirement computation methodology. Corsicana changed its methodology for designing its rates when it switched to inclining-block rates, but that change was not abusive.
70. There is no evidence that Corsicana has changed between the Cash and Utility Basis methods for computing its cost of service.
71. Since 2001, Corsicana has designed its rates to include a base rate and volumetric rates, which are the same for its wholesale customers as its inside-city retail customers.
72. Under the 2009 Rate Ordinance that adopted the protested rates, "Residential and Commercial (Inside City Limits)" customers are in "Class I." The ordinance compares the previous rates and the new rates. For both it specifies that the base and volumetric rates for "Wholesale Contract Customers" are the "Same as Class I."
73. Corsicana has numerous inside-city retail customers who pay the same highest tier gallonage rates that the Ratepayers pay for wholesale service, and Corsicana's inclining-block rates encourage water conservation.

Other Valuable Consideration Received Incident to the Contracts

74. The evidence does not show that other valuable consideration was received by either the Ratepayers or Corsicana incident to their water-supply contracts.

Incentives Necessary to Encourage Regional Projects or Water Conservation

75. The evidence does not indicate that the protested rates encourage regional projects.

76. Corsicana's inclining-block rates encourage water conservation consistent with TCEQ and Texas Water Development Board policy. That includes encouraging wholesale customers like the Ratepayers to search for and repair leaks.
77. Corsicana did not abuse monopoly power by adopting inclining-block rates.

Corsicana's Obligation to Meet Federal and State Drinking Water Standards

78. The relevant evidence does not show that the Corsicana's rate increase was attributable to Corsicana's obligation to meet federal and state drinking water standards.

Rates Charged in Texas by Other Sellers of Water for Resale

79. The City of Waxahachie's volumetric rate for wholesale customers is \$3.45 per 1,000 gallons, which is more than Corsicana's top-tier rate of \$3.25 per 1,000 gallons.
80. The Lake Granbury Surface Water and Treatment System, owned and operated by the Brazos River Authority, provides wholesale treated water only, at an average rate of \$3.97 per 1,000 gallons.
81. Rice's water supply contract with Ennis entitles Rice to purchase 2.7 MGM of water. Rice currently pays Ennis \$3.00 per 1,000 gallons with a \$6,750 monthly minimum payment. If Rice bought the maximum volume under the Ennis contract, it would pay an effective rate of \$5.50 per 1,000 gallons. That is substantially higher than Rice's effective rate with Corsicana of \$3.389 per 1,000 gallons.
82. The rates charged by other sellers of water for resale in Texas do not suggest that Corsicana's rates indicate an abuse of monopoly power.

Comparison of Corsicana's Retail Rates and Ratepayers' Retail Rates Due to Corsicana's Wholesale Rates

83. Corsicana's base rate is \$17.60 for a 5/8- or 3/4-inch meter with the first 1,000 gallons included. The volumetric rate is \$3.00 per 1,000 gallons for 1-10,000 gallons, \$3.15 per 1,000 gallons for 10,001-25,000 gallons, and \$3.25 per 1,000 gallons for over 25,000 gallons.
84. Nearly all of Corsicana's residential retail customers and many of its small commercial customers have 5/8- or 3/4-inch meters.
85. Both Corsicana's and the Ratepayers' average residential retail customer uses an average of 6,000 gallons per month.
86. Based on the above, an average in-city retail customer of Corsicana would be billed \$32.60 for water each month, which equates to an average of \$5.43 per 1,000 gallons for the 6,000 gallons that it uses.
87. The Ratepayers have larger meters than residential customers and pay a higher base rate, which includes the first 1,000 gallons, for each meter. Some of the Ratepayers have more than one meter.
88. Each Ratepayer is able to allocate to each of its retail customers a portion of the base rate that it pays to Corsicana, which provides a lower effective base rate per retail customer.
89. For the volumetric charge, the Ratepayers pay Corsicana's Third Tier rate on almost all of the water that they purchase from Corsicana; therefore, the volumetric rate averages \$3.25 per 1,000 gallons or \$19.50 for 6,000 gallons.
90. Taking into account both base and volumetric charges, the following table shows the average rate per 1,000 gallons that each Ratepayers' average retail customer pays due to Corsicana's wholesale rates:

Monthly Charges to Ratepayers' Average Residential Retail Customers Due To Corsicana's Wholesale Rates (per 1,000 gallons)					
[A] Petitioner	[B] Base Rate Charged by Corsicana	[C] Number of Petitioner's Retail Connections	[D] = [B] ÷ [C] Petitioner's Retail Customer's Base Rate Attributable to Corsicana's Wholesale Rate	[E] = ([D] + (\$3.25 x 6)) Monthly Water Rate as a Result of Corsicana's Wholesale Rate	[F] = [E] ÷ 6 Petitioner's Retail Customer's Rate per 1,000 gallons Resulting from Corsicana's Wholesale Rate
Angus	\$386.02	359	\$1.08	\$20.58	\$3.43
Blooming Grove	\$292.55	430	\$0.68	\$20.18	\$3.36
Chatfield	\$970.53	1,411	\$0.69	\$20.19	\$3.36
Community Water Co.	\$479.49	417	\$1.15	\$20.65	\$3.44
Corbet	\$467.94	820	\$0.57	\$20.07	\$3.35
Frost	\$292.55	247	\$1.18	\$20.68	\$3.45
Kerens	\$173.39	750	\$0.23	\$19.73	\$3.29
M.E.N.	\$497.31	1,412	\$0.35	\$19.85	\$3.31
Navarro Mills	\$584.51	1,210	\$0.48	\$19.98	\$3.33
Rice	\$2,747.89	3,156	\$0.87	\$20.37	\$3.40

91. Based on the above, an average residential retail customer pays a Ratepayer an average of \$3.45 or less per 1,000 gallons of water due to the wholesale rates that Corsicana charges the Ratepayer, while Corsicana's own average retail customer pays Corsicana an average of \$5.43 for 1,000 gallons.
92. Based on the above, a comparison of Corsicana's retail rates and Ratepayers' retail rates due to Corsicana's wholesale rates does not indicate that Corsicana is abusing monopoly power.

Transcription Cost

93. Because the hearing was scheduled for more than one day, the ALJ ordered the Ratepayers to arrange for and pay a court reporter to record and transcribe the hearing on

the merits and to deliver the original transcript to the ALJ and two copies to the TCEQ's Chief Clerk.

94. Because the ALJ ordered the transcript, no Party requested it.
95. The Ratepayers and Corsicana fully participated in the hearing and benefited from the transcript.
96. There is no evidence that justice requires a certain allocation of the transcription cost.
97. There is no evidence of budgetary constraints or whether the expense of this proceeding may be recovered through utility rates.
98. There is no specific evidence concerning the Ratepayers' or Corsicana's ability to pay for a transcript.
99. Corsicana, Blooming Grove, Frost, and Kerens are cities with tax bases; Community is an investor owned water utility; and the other Ratepayers are water supply corporations.
100. Corsicana and all of the Ratepayers are providing water service for compensation.
101. Ranked by connections served, Frost is the smallest Ratepayer and serves 247 connections. Rice is the largest and serves 3,156 connections.
102. Corsicana and the Ratepayers were all represented by competent and experienced counsel throughout the long prehearing and 5-day hearing process.
103. Based on the above, Corsicana and each of the Ratepayers can pay 1/11th of the cost of the transcript and copies for the ALJ and TCEQ.

II. CONCLUSIONS OF LAW

Jurisdiction

1. As required by TEX. GOV'T CODE ANN. (Gov't Code) §§ 2001.051(1) and 2001.052, the Parties were notified of the hearing.
2. The Commission has jurisdiction under Water Code §§ 11.036 and 11.041 to consider the Second Amended Petition by each of the Ratepayers.
3. Additionally, the Commission has jurisdiction under Water Code § 12.013 to consider the Second Amended Petition by Blooming Grove, Frost and Kerens because each of them is a political subdivision.
4. As general principal of law associational standing is not appropriate when the participation of a party is required. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 447 (Tex. 1993).
5. The Commission's wholesale-service rules, Subchapter I of Chapter 291 of 30 TAC, are applicable in this case because the petitions seek review of rates charged for the sale of water for resale and were filed pursuant to Water Code Chapters 11 and 12 and Section 13.043(f).
6. Several of the factors that the Commission considers in determining whether the protested rate affects the public interest focus on the unique circumstances of an individual ratepayer and its relationship with the wholesale provider. 30 TAC § 291.133(a)(2), (3)(A) & (D) & (4).
7. The participation of the individual who receives water service is required in a wholesale-rate appeal.

8. Based on the above Findings of Fact and Conclusions of Law, NCWR did not have standing to file the Original Petition as an association of the Ratepayers.
9. The Commission has no jurisdiction under Water Code § 13.043(f) to consider the Original Petition because it was not filed by a retail public utility that received water service from Corsicana.
10. The Commission has no jurisdiction under Water Code § 13.043(f) to consider the First or Second Amended Petitions because they were not filed within 90 days after receiving notice of Corsicana's rate increase.
11. Based on the above Findings of Fact and Conclusions of Law, the Commission has no jurisdiction to consider NCWR's petitions on its own behalf and they should be denied with prejudice to refiling.
12. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to Gov't Code ch. 2003.

The Requirement for an Initial Public-interest Determination

13. Unless the parties agree otherwise, the wholesale-service rules require an initial hearing to determine whether a protested rate charged pursuant to a contract adversely affects the public interest. 30 TAC §§ 291.131(b) and 291.132(a), (c), and (d).
14. In the public-interest hearing, the petitioner has the burden of proof. 30 TAC § 291.136.
15. If the Commission determines the protested rate does not adversely affect the public interest, the Commission will deny the petition or appeal by final order. 30 TAC § 291.134(a).

Public Interest Factors

16. Commission rule 30 TAC § 291.133(a) sets out the factors to be considered in determining whether the public interest is affected by a protested wholesale rate.
17. The public-interest inquiry set out in 30 TAC § 291.133(a)(1)-(4) does not include a comparison of the protested rate's impacts on wholesale and retail customers.
18. The Commission shall not determine whether the protested rate adversely affects the public interest based on an analysis of the seller's cost of service. 30 TAC § 291.133(b)
19. Whether the protested rate conforms to the contracts between the Ratepayers and Corsicana is outside the scope of this case. The Commission assumes that the seller's protested rate correctly interprets any existing agreement between the seller and purchaser. The Commission decision is not tantamount to a judicial interpretation of any underlying agreement. The parties would still have the courts to seek this redress.

Public-interest Considerations in This Case

20. The Ratepayers have not claimed that the factors set out in 30 TAC § 291.133(a)(1), (2) & (4) are applicable in this case.
21. Under 30 TAC § 291.133(a)(3), the Commission shall determine the protested rate adversely affects the public interest if after the evidentiary hearing on public interest the Commission concludes the protested rate evidences the seller's abuse of monopoly power in its provision of water 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 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 drinking water standards;
 - (g) the rates charged in Texas by other sellers of water service for resale; and
 - (h) the seller's rates for water 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.
22. The Ratepayers have failed to show under the factors set out in 30 TAC § 291.133(a)(3) that Corsicana's protested rates evidence Corsicana's abuse of monopoly power in its provision of water service to them.
 23. The Ratepayers have failed to show that any public interest criteria set out in 30 TAC § 291.133(a) has been violated by Corsicana or its protested rates.
 24. In accordance with 30 TAC § 291.134(a), the Ratepayers' petitions for review of Corsicana wholesale rates should be denied.

Transcriptions Costs

25. Commission rule 30 TAC § 80.23(d) provides that the Commission will not assess transcript costs against the ED or the OPIC and that it will consider the following relevant factors in allocating reporting and transcription costs among the other parties:
 - the party who requested the transcript;
 - the financial ability of the party to pay the costs;
 - the extent to which the party participated in the hearing;
 - the relative benefits to the various parties of having a transcript;

- the budgetary constraints of a state or federal administrative agency participating in the proceeding;
 - in rate proceedings, the extent to which the expense of the rate proceeding is included in the utility's allowable expenses; and
 - any other factor which is relevant to a just and reasonable assessment of costs.
26. Based on the above Findings of Fact and Conclusions of Law, Corsicana and each of the Ratepayers should be required to pay 1/11th of the cost of the transcript and copies for the ALJ and TCEQ.

III. EXPLANATION OF CHANGES

At its November 2, 2011 Agenda Meeting, the Commission adopted the ALJ's Proposed Order with inclusion of the change to Finding of Fact No. 79 recommended by the Executive Director and agreed to by the ALJ in his September 27, 2011 Response to Exceptions and Replies.

Additionally, at its November 2, 2011 Agenda Meeting, the Commission modified Conclusion of Law No. 17 to remove the statement that the public-interest review is "limited to" the factors set out in 30 TAC §291.133(a)(1)-(4). Finally, one typographical correction was made to Finding of Fact No. 4 by the Office of the General Counsel, acting under its authority delegated by Commission Resolution Docket No. 2009-0059-RES.

IV. ORDERING PROVISIONS

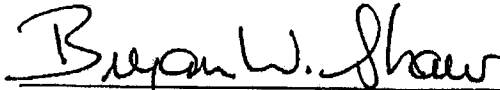
NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The petitions of NCWR, M.E.N. Water Supply Corporation, Rice Water Supply Corporation, Angus Water Supply Corporation, Chatfield Water Supply Corporation, Corbet Water Supply Corporation, Navarro Mills Water Supply Corporation, City of Blooming Grove, City of Frost, City of Kerens, and Community Water Company to review the wholesale rate increase imposed by the City of Corsicana under Certificate of Convenience and Necessity No. 10776 in Navarro County are denied with prejudice to refiling.
2. In accordance with 30 TAC § 80.23, each of the following parties shall pay 1/11th of the cost of the transcript and copies for the ALJ and Commission: M.E.N. Water Supply Corporation, Rice Water Supply Corporation, Angus Water Supply Corporation, Chatfield Water Supply Corporation, Corbet Water Supply Corporation, Navarro Mills Water Supply Corporation, City of Blooming Grove, City of Frost, City of Kerens, Community Water Company, and the City of Corsicana
3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
4. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Gov't Code § 2001.144.
5. The Commission's Chief Clerk shall forward a copy of this Order to the Parties.

6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED: NOV 09 2011

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

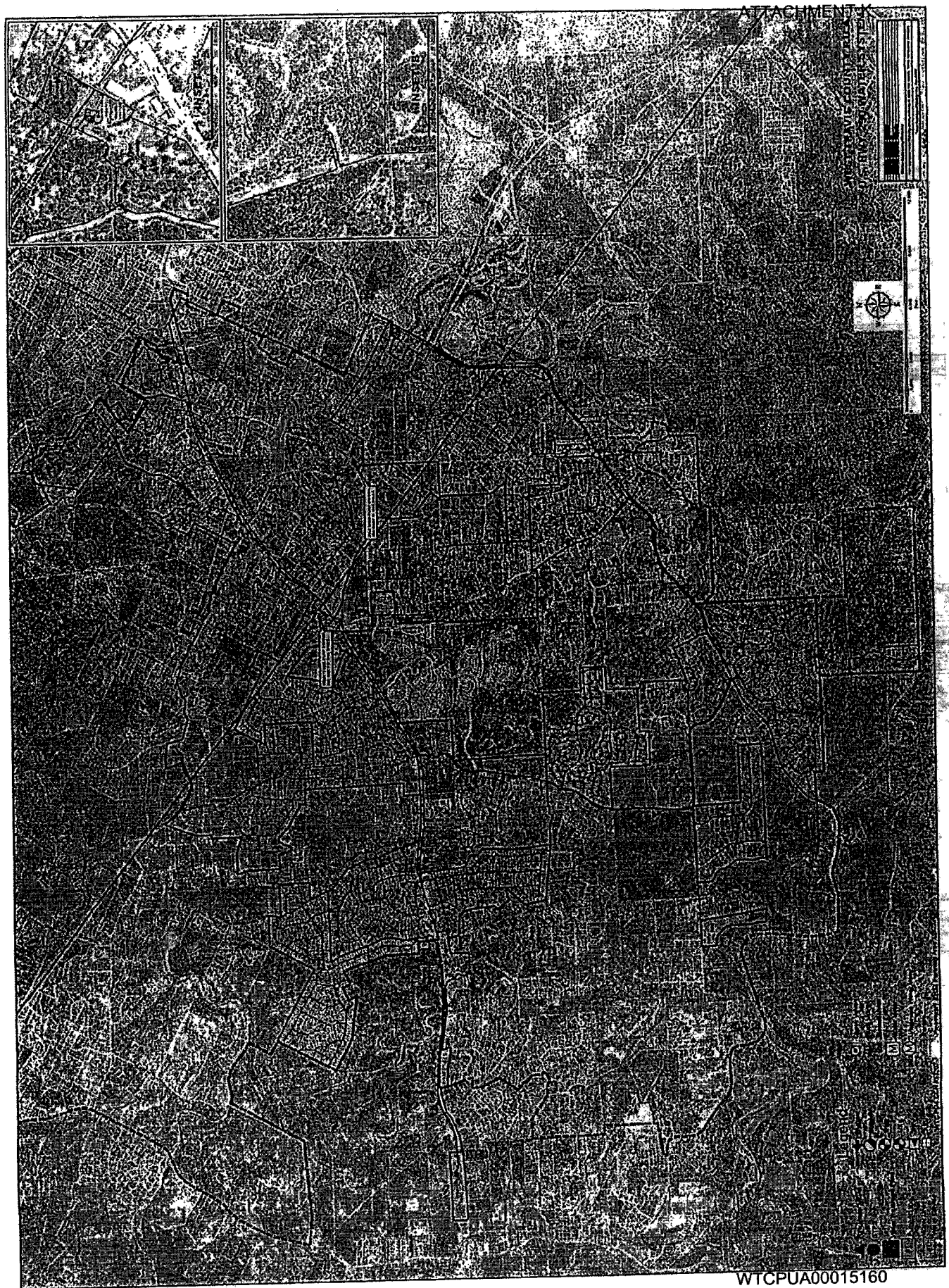
A handwritten signature in cursive script, reading "Bryan W. Shaw". The signature is written in dark ink and is positioned above a horizontal line.

Bryan W. Shaw, Ph.D., Chairman
For the Commission

(Input Fee)

Historical District	Current District	Route #	Route Name	Jurisdictional District
231 Bee Cave	71	312	Uplands	City of Bee Cave
231 Bee Cave	71	313	Seven Oaks	City of Bee Cave
231 Bee Cave	71	314	Falconhead	City of Bee Cave
231 Bee Cave	71	315	Spanish Oaks & Hwy 71	City of Bee Cave
231 Bee Cave	71	316	Lake Pointe	WTC MUD 5 / Travis Cnty
231 Bee Cave	71	317	Lake Pointe	WTC MUD 5 / Travis Cnty
231 Bee Cave	71	318	Shops at the Galleria	City of Bee Cave
231 Bee Cave	71	319	Lake Pointe	WTC MUD 5 / Travis Cnty
231 Bee Cave	71	320	Lake Pointe	WTC MUD 5 / Travis Cnty
231 Bee Cave	71	321	620 and 71	City of Bee Cave
466	71	411	Homestead & Meadowfox	City of Bee Cave
477 290/HPR	290	381	Sunset Canyon South	Hays Cnty
477 290/HPR	290	402	Sunset Canyon North	Hays Cnty
477 290/HPR	290	382	Highpointe MUD#5	Hays Cnty
477 290/HPR	290	383	Rim Rock	WTC MUD 5 / Travis Cnty
477 290/HPR	290	384	Creeks of Driftwood	Hays Cnty
477 290/HPR	290	397	Rutherford West	Hays Cnty
477 290/HPR	71	501	Belvedere	WTC MUD 5 / Travis Cnty
477 290/HPR	71	511	Rocky Creek TC 16 Valley	WTC MUD 5 / Travis Cnty
237 Bee Cave South	290	391	Kemp/Zyle	WTC MUD 5 / Travis Cnty x 50%
237 Bee Cave South	290	392	Bear Creek	Hays Cnty
237 Bee Cave South	290	393	Vistas	Hays Cnty
237 Bee Cave South	290	394	Polo/Nutty Brown	Hays Cnty
237 Bee Cave South	290	395	290	WTC MUD 5 / Travis Cnty x 40%
237 Bee Cave South	290	396	Ledgestone (Bush Ranch) MUD#4	Hays Cnty x 60%
237 Bee Cave South	290	398	Fitzhugh	Hays Cnty
237 Bee Cave South	290			WTC MUD 5 / Travis Cnty
237 Bee Cave South	290			WTC MUD 5 / Travis Cnty x 20%
237 Bee Cave South	290	399	1826	Hays Cnty x 80%





WTCPUA00015160

231 Bee Cave

<u>Route</u>	<u>Number of customers</u>
312	179
313	211
314	412
315	394
316	263
317	219
318	81
319	212
320	250
321	547

466 Homestead/Meadowfox

<u>Route</u>	<u>Number of customers</u>
411	162

477 290/HPR

<u>Route</u>	<u>Number of customers</u>
381	229
402	240
382	729
383	381
384	20
397	22
501	164
511	248

237 Bee Cave South

<u>Route</u>	<u>Number of customers</u>
391	294
392	97
393	303
394	326
395	276
396	233

398
399

254
50

①

JTC PUA - Wholesale Customer Committee

28 Jan 13

- Send to Committee:

- Maps

- impact fee study

- LCRA Purchase Agreement

- Water Count data - ^{historical} - growth proj~~also~~ - send chet → work payor PDF

- send chet wholesale contract

- acc'ty person for each District

- Concerned about Oct 1 date ⇒ prefer Jan 1st- Next Meeting March 25th 2:00pm

- Graduated increase bill → ??

①

25 March 13

TCL PUA - Wholesale Customer Mtg

Schedule: 8th

- April ~~1st~~ → individual meetings
- May 2nd → volume rates w/ board
- May 6th = meeting wholesale customers

Run scenario:

1) IF MGD allocate w/ current costs

2) IF Credit = exists improvement =

difference between LCA original costs and
FUA purchase costs

Capital Reconciliation Credit

⇒ add in retail reservations ←

Forecast
= 50%① April 1st 2.00 pmt② new scenario cut by ~~new~~ budget ①→ first come, first serve ⇒ don't want to go for
new governor

POA - Wholesale Meeting

1 April B.

✓ Run Retail #s \Rightarrow cost allocation \Rightarrow

✓ Run Savings w/ Series 2015 Bonds on this

✓ Give Bruce - Voluntary rate Δ analysis
+ impact to Customers

\rightarrow Retail Min bill Example

\rightarrow Want more buckets for allocation - Chet

✓ Issue for Customers who paid in \Rightarrow

\rightarrow give credit for what was actually
paid in

Scenario 3 \Rightarrow

- actual impact / see credits - based on credit
costs

\rightarrow Run Wastewater

WTPUA meeting w/ Doug Holton
Joe need EST cost

30 April 13

Steph ~~1000000~~

Nelson

Don TC #12 Reservations # ← begin @ 3,980,000

Alan

2125 LIVES based on new water contract

→ Revised Capacity # by May 14th

→ send the examples of existing w/

- send copy of financial policies

- send actual v. budget Oem →

LaZy Mike ~~1000000~~ Mike - 607 LIVES ⇒ Need Revised EST cost

Don Crockett

1.5 M = \$ 50,000 / year

\$ 5100

\$ 1,333,000

2008-1st year 37,5000

2009 50,000

2010 50,000

2011 50,000

2012 50 → March

WTCPUA - Meeting w/ TCMU #12

8 Nov 12

Joe D - go through contracts, studies, and details -
 Jay S. have compelling argument ~~with~~
 Allen - methodology + data w/ in the
 methodology = issue

- issue - impact fees to LCRA - impact fees
 paid to LCRA that were never built
 - says subject to refund
 - want credit for impact fees they paid

- contract says want pay for system capex

- Recommendation not look value to allocate the
 costs b/c don't have a seat @ the
 board → acquire premium b/c goes
 to those w/ a seat @ the board

- Put reserve and capex into seat = they
 get interest
 → want whole calc to show how they get credit
 for that now

- 1) 100% credit for T.F. paid to the LCRA
- 2) cost allocated and ~~WT~~ -
- 3) credit for ~~reserves~~ reserves / times coverage

①

5 Nov 12

WTCPUA - Wholesale
customer
mtg

- since 2007 - Barton Creek West
- decrease in rate

2475 - 2167 in 2008

- 3 increases in garbage rate

2475 2.47 2007

2475 2.52 2008

2167 2.83 2009

2167 2.86 2010

2167 2.86 2011

pass through in
rate
(3rd increase)

~ 11.5% increase

- thinks this was good BCWS - tied
to billing issues of District #4

- want to see what total is wholesale
+ growth v. existing

- how do other utilities show in increases
→ benchmarking

⊛ ⇒ Did other wholesale customers have other DS?

→ garrison@dripping springs water.com

- 2 BCWSC

1 DS WSE

⊛ do a no growth scenario