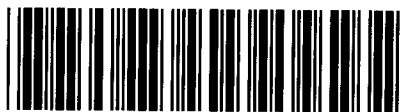




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PETITION OF TRAVIS COUNTY	§	BEFORE THE STATE OFFICE
MUNICIPAL UTILITY DISTRICT NO.	§	
12 APPEALING CHANGE OF	§	
WHOLESALE WATER RATES	§	
IMPLEMENTED BY WEST	§	
TRAVIS COUNTY PUBLIC UTILITY	§	OF
AGENCY, CITY OF BEE CAVE, TEXAS	§	
HAYS COUNTY, TEXAS AND WEST	§	
TRAVIS COUNTY MUNICIPAL	§	
UTILITY DISTRICT NO. 5	§	ADMINISTRATIVE HEARINGS

REBUTTAL TESTIMONY OF
JOSEPH A. DIQUINZIO, JR.
ON BEHALF OF TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12

MARCH 24, 2015

120

REBUTTAL TESTIMONY OF JOSEPH A. DIQUINZIO, JR.

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Exhibits

JAD Exhibit R1	TCMUD 12's Response to WTCPUA's RFI 2-14
JAD Exhibit R2	WTCPUA Response to TCMUD 12's RFA 1-6

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME.**

3 A. I am Joseph A. DiQuinzio, Jr.

4 **Q. ARE YOU THE SAME PERSON WHO FILED DIRECT TESTIMONY IN THIS**
5 **PROCEEDING ON BEHALF OF TCMUD 12?**

6 A. Yes, as indicated in my direct testimony, I am President of JadCo Management, Inc., the
7 General Manager of TCMUD 12, the named Petitioner in this docket. I am responsible
8 for the filing of the Petition on behalf of TCMUDs 11, 12 and 13 (collectively, the
9 "Districts"), as directed by the Districts' Boards of Directors.

10 **Q. WHAT IS THE PURPOSE AND SCOPE OF YOUR REBUTTAL TESTIMONY?**

11 A. My testimony rebuts statements contained in the direct testimonies of witnesses
12 appearing on behalf of West Travis County Public Utility Agency (the "PUA" or
13 "WTCPUA"), Mr. Richard Baudino and Mr. Don Rauschuber, as well as PUC Staff
14 witness, Ms. Heidi Graham. I have read the testimony filed by the PUA and Ms.
15 Graham. My rebuttal testimony reaffirms that TCMUD 12 lacks any reasonable,
16 alternative providers of potable water and the PUA has abused its disparately greater
17 bargaining power against TCMUD 12. Dr. Jay Zarnikau and Mr. Jay Joyce are also filing
18 testimony on behalf of TCMUD 12 to rebut the PUA's and Staff's witnesses' opinions
19 and conclusions.

20 **Q. PLEASE EXPLAIN HOW YOUR REBUTTAL TESTIMONY IS ORGANIZED?**

21 A. In Section II, I rebut the testimony presented by the PUA and Staff, which concerns the
22 lack of alternative water service providers for TCMUD 12. I discuss the lack of
23 alternative water service providers both during the time period when WTCPUA was
24 changing our wholesale water rates in 2014, and also longer ago, when TCMUD 12 was
25 acquiring raw water and wholesale water services from LCRA. In Section III. I present
26 additional rebuttal concerning the PUA's disparately greater bargaining power. Finally,
27 in Section IV, I rebut other issues raised by the PUA in its direct testimony.

1 **II. TCMUD 12'S ALTERNATIVES TO PUA AS WATER SERVICES PROVIDER**

2 **Q. WERE THERE ALTERNATIVE PROVIDERS OF WHOLESALE WATER**
3 **SERVICE THAT COULD HAVE PROVIDED THE SERVICE TO THE**
4 **HIGHLANDS IN 2009 WHEN TCMUD 12 ENTERED INTO THE WHOLESALE**
5 **WATER SERVICES AGREEMENT WITH LCRA (BAUDINO DIRECT AT 7:15-**
6 **21)?**

7 A. No, there were no alternative providers of wholesale water service in the 2008-09 time
8 frame when we were in discussions with LCRA and there still aren't any alternative
9 providers. Mr. Baudino has completely misconstrued the portion of my testimony that he
10 cites in support of his opinion that TCMUD 12 had alternatives to LCRA. First,
11 Lakeway MUD (LMUD) does not have the capacity to divert, transmit and treat the raw
12 water we buy from LCRA to serve The Highlands. LMUD was not then, and is not now,
13 an alternative service provider to the LCRA or the PUA for wholesale water service to
14 The Highlands. Second, the possibility of constructing a new Water Treatment Plant
15 ("WTP") in The Highlands was explored by LCRA but ultimately rejected, due to the
16 cost. If we had decided to walk away from the PUA contract in 2013 because of their
17 change to the revenue requirement and rate methodology, both the cost and the logistics
18 would have been prohibitive, as I explain in more detail below.

19 **Q. PLEASE EXPLAIN WHY THERE WASN'T AN ALTERNATIVE TO LCRA AT**
20 **THE TIME TCMUD 12 SIGNED THE WHOLESALE WATER SERVICES**
21 **AGREEMENT.**

22 A. In 2008 when we negotiated the raw water contract with LCRA they had the only source
23 of water available to the Districts. Our purchase of raw water from LCRA did not *make*
24 LCRA a sole source provider, as Mr. Baudino opines. LCRA was the *only* supplier in the
25 entire area. Once we secured a supply of water from LCRA, we began discussions with
26 them about how to get the water out of the Lake, transmitted to a WTP, treated, and then
27 delivered to us for ultimate sale to end-use customers.

28 LCRA was interested in exploring the possibility of constructing a new WTP on The
29 Highlands property because we have two to three miles of shoreline on Lake Travis that
30 would provide good exposure for an intake structure, and an ideal site in that area of The
31 Highlands for LCRA to construct a combined WTP and storage facility. LCRA was

1 interested in expanding its service to the west as far as Marble Falls, because there were
2 no water service providers from Bee Creek west all the way to Marble Falls. In addition,
3 an alternative to the Uplands WTP would be necessary if LCRA was to expand its service
4 that far west because the Uplands WTP did not have the capacity to serve an area that
5 large. The “extended period of negotiations” leading up the execution of the Wholesale
6 Water Services Agreement that I refer to in my Direct Testimony¹ was largely devoted to
7 discussions concerning LCRA’s engineers’ investigation of a possible new WTP at The
8 Highlands, not for the specific quantities of water to be “treated” for the Districts, as Mr.
9 Baudino states.² LCRA ultimately abandoned the idea of constructing a new WTP at The
10 Highlands based on economic infeasibility, notwithstanding LCRA’s virtually unlimited
11 financial resources. The fact that LCRA was exploring expansion of its water service
12 area to the west was based upon the absence of a centralized water supplier to the west.
13 LCRA wanted to control the water supply for the same reasons they were buying
14 individual systems – the very small sporadic systems often fail or are mismanaged.

15 **Q. MR. BAUDINO HAS OPINED THAT LCRA DEFINITELY DID NOT HAVE**
16 **COMPLETE CONTROL OVER PRICES AND QUANTITIES.³ DO YOU AGREE**
17 **WITH THAT STATEMENT, AND IF NOT, PLEASE EXPLAIN WHY?**

18 A. No, Mr. Baudino’s suggestion that TCMUD 12 voluntarily negotiated with LCRA
19 concerning prices and quantities is absurd. LCRA is an 800 pound gorilla, and you don’t
20 negotiate with them. Once LCRA abandoned the idea of a “Highlands” WTP, the
21 contract negotiations centered on *how* but not *how much* TCMUD 12 was going to pay
22 for Wholesale Water Services. Our Raw Water Contract had been secured the year
23 before, and that established the quantity of water we could use to serve end-use
24 customers.⁴ Because Lakeway MUD was treating enough water for 375 LUEs at Rough
25 Hollow,⁵ the quantity of water that we needed LCRA to service was the remaining
26 quantity of raw water we had reserved, which was enough to serve 2,125 LUEs for The

¹ J. DiQuinzio Direct at page 6, line 16; discussed by Mr. Baudino in his Direct Testimony at page 19, lines 11-13.

² Mr. Baudino Direct at p. 19, lines 11-13.

³ Baudino Direct at page 19, lines 4 – 7.

⁴ J. DiQuinzio Direct at page 4, line 21 – page 5, line 4, and JAD Exhibit 2.

1 Highlands. LCRA *told* TCMUD 12 what it would cost, and we then worked out an
2 installment plan to obtain LCRA's wholesale water services. That plan required
3 TCMUD 12 to pay - before the Developer had turned dirt on the first lot in The
4 Highlands - \$350,200 in October 2009, an additional \$350,200 on or before April 1, 2010
5 (i.e., 6 months later), and then \$199,900 on or before May 15th of 2011, 2012, 2013 and
6 2014.

7 **Q. WHAT DOES THE TIMING OF THE INSTALLMENT PAYMENTS TELL YOU**
8 **ABOUT LCRA'S AND TCMUD 12'S RELATIVE BARGAINING POWER?**

9 A. The timing of the installment payments (which totaled \$1.5 million) demonstrates both
10 that LCRA had significant bargaining strength and that TCMUD 12's lacked any
11 bargaining power. When we were trying to obtain wholesale water services from LCRA,
12 who was the only provider of that service as well as raw water, The Highlands was raw
13 land full of cedar. There wasn't a single house in The Highlands and that meant there
14 was no tax base to which TCMUD 12 could look to obtain bond financing. LCRA set all
15 the rates, as is clear from reading the Wholesale Water Services Agreement Section
16 4.01,⁶ and TCMUD 12 was required to pay up front Connection Fees even though there
17 were no homes in place. The Connection Fee was \$4,120 per LUE, so the initial
18 installment payment of \$350,200 was the equivalent of 85 LUEs – but there were zero
19 LUEs on the effective date. TCMUD 12 needed potable water to develop The Highlands,
20 and so LCRA had us over a barrel. We either pre-paid Connection Fees, or we would not
21 have been able to move forward with development of The Highlands.

22 **Q. WHAT DO YOU MEAN BY THE TERM BARGAINING POWER?**

23 A. Bargaining power exists if both sides to an agreement or contract have alternatives. In
24 our dealings with LCRA, and then with WTCPUA after it took over operations from
25 LCRA, we had no alternative means of obtaining wholesale water service. As I've
26 already explained, LCRA was the *only* wholesale water service provider that could serve
27 The Highlands. In 2013, when the WTCPUA took the actions we are appealing, we had
28 designed and built our internal water system at The Highlands, and we could not simply

⁵ Rough Hollow is part of TCMUD 11, not in The Highlands, and receives wholesale water service from LMUD.

⁶ JAD Exhibit 4, Section 4.01.a. ("The Connection Fee is currently \$4,120.")

1 go elsewhere. As I explain in my Direct Testimony and later in this Rebuttal, there were
2 and are both economic and practical reasons that we do not have an alternative. Without
3 alternatives, we could not bargain for any concessions.

4 **Q. DO YOU HAVE A RESPONSE TO THE PUA WITNESSES'⁷ AND PUC STAFF**
5 **WITNESS'⁸ CRITICISM OF YOUR TESTIMONY RELATED TO THE**
6 **ESTIMATED COST FOR THE CONSTRUCTION OF YOUR OWN WTP AND**
7 **ASSOCIATED DIVERSION AND TRANSMISSION FACILITIES?**

8 A. Yes, as I've already explained, in 2008-09 LCRA was analyzing the feasibility of
9 constructing a WTP at The Highlands. The LCRA, with financial resources that were
10 vastly superior to TCMUD 12, abandoned the idea of a "Highlands" WTP because it was
11 not financially viable. Because The Highlands was nothing but raw land at the time, our
12 ability to issue bonds to pay for the construction of a water service system was non-
13 existent. In my direct testimony I was giving an approximation of what the cost in
14 today's dollars would have been *if* TCMUD 12 had tried to construct its own WTP and
15 associated facilities in 2008-09 as an alternative to signing up with LCRA. The present
16 day cost of that "alternative" also illustrated why it wasn't feasible in 2013-14 when the
17 PUA took the rate-affecting decisions that are on appeal in this case.

18 To arrive at the approximate cost, I asked TCMUD 12's engineer, Douglas Rummel with
19 Carlson, Brigance & Doering, to give me some high level numbers to construct a 4 MGD
20 WTP in western Travis County. Based on his discussions with the engineer for Cedar
21 Park, he arrived at \$5/gallon/day for a 4MGD WTP (total \$20 million), plus \$80/LF for a
22 raw water pipe (total \$1.2 million), plus \$2 million for a floating intake barge, and \$2.3
23 million for engineering and permitting.⁹ Those high-level estimates total \$25.52 million.
24 Even if Don Rauschuber's estimate of \$13.5 Million is accepted as a better
25 approximation, my point remains the same: construction of a new WTP and associated
26 facilities is not an economically viable alternative to obtaining wholesale water service
27 under our contract. It wasn't a financially viable alternative for LCRA in 2008-09, and it
28 isn't an economically feasible alternative for TCMUD 12 – then or now.

⁷ D. Rauschuber Direct at 29:9 – 31:10.

⁸ H. Graham Direct at 8:2 – 3.

1 In addition, The Highlands internal water system is designed to distribute water from the
2 PUA's point of delivery on Highway 71 to The Highlands. The approximate cost of an
3 alternative WTP and associated equipment does not include the cost that TCMUD 12
4 would incur if the water entered the internal system at an alternate location, which would
5 require us to make potentially significant modifications and potentially abandon some
6 expensive facilities, such as pressure valves. We don't just buy water diversion,
7 transmission and treatment services from WTCPUA, we are paying for the entire water
8 system necessary to serve The Highlands. Once we connected to the Highway 71 Point
9 of Connection, the design and operation of the internal water system were fixed to
10 coincide with the PUA system.. That cannot be simply or inexpensively undone. One of
11 the big issues for The Highlands and other wholesale purchasers of potable water is
12 storage. This is important for The Highlands because of the many changes in elevation,
13 which necessitate storage to ensure proper pressure. Storage is very expensive and
14 cannot be built in increments for the first few houses, but as a practical matter has to be
15 built all at once. The PUA system has existing adequate storage at the proper elevations
16 to enable the TCMUD 12 system to operate without additional internal storage facilities.
17 There is no other supplier with that capability and the costs associated with replacing that
18 part of the water system would be prohibitive for TCMUD 12.

19 TCMUD 12 was not in 2013-14 and is still not in any position to shoulder the cost for
20 alternative water service facilities. The Highlands is highly successful and one of the
21 fastest growing developments in Travis County, but its tax base is so small that it could
22 not support a bond issuance of the size that would be needed to construct even a "Don
23 Rauschuber" WTP and facilities i.e., a \$13.5 million bond issue. TCMUD 12 and 13 was
24 able to sell their *first* bonds (\$2.7 Million and \$3.0 Million, respectively) only recently –
25 in 2015. Even combined, those bonds wouldn't begin to enable TCMUD 12 to fund the
26 construction of a \$13.5 million water service system.

⁹ See, JAD Exhibit R1 - TCMUD 12's Response to WTCPUA's RFI 2-14 (Feb. 11, 2015).

1 Q. ARE THERE ANY OTHER MATTERS THAT WOULD HAVE TO BE
2 CONSIDERED IN DETERMINING IF TCMUD 12 HAD ALTERNATIVE
3 MEANS OF OBTAINING WHOLESALE WATER SERVICES IN 2013-14 WHEN
4 WTCPUA MADE THE DECISION CONCERNING RATES THAT IS
5 APPEALED IN THIS CASE?

6 A. Yes, the fact is that TCMUD 12 has a significant investment in the West Travis County
7 Water System that we would have to abandon if we decided to build our own WTP rather
8 than continue taking wholesale water service from WTCPUA. Staff Witness Graham
9 simply dismisses my testimony on this issue, based upon her conclusion that we failed to
10 document this statement.¹⁰ Ms. Graham apparently overlooked TCMUD 12's initial
11 investment of \$1,500,000 paid to LCRA/PUA as reflected in the Wholesale Water
12 Services Agreement, Exhibit 4¹¹ and as I discussed at page 14, lines 21-page 15, line 2 of
13 my Direct testimony. PUA witness Mr. Baudino characterizes TCMUD 12's \$1,500,000
14 initial investment in the West Travis County Water System as a "substantial financial
15 consideration" and agrees it would have been imprudent for TCMUD 12 to abandon that
16 investment by seeking an alternative provider after the PUA took over operations of the
17 System.¹²

18 I feel it is necessary to point out several reasons that Ms. Graham's testimony is not
19 reasonable: (1) the PUC Staff failed to ask a single discovery question, so she is
20 disputing my testimony without any basis for doing so;¹³ (2) her testimony ignores the
21 documentation found in the Wholesale Water Services Agreement concerning TCMUD
22 12's \$1.5 million investment; but (3) implicit in her testimony is acceptance that there is
23 some level of cost of an alternative supply that would support a finding of disparately
24 greater bargaining power. The evidence we have presented about the cost of an
25 alternative water service supply for TCMUD 12 fully supports a finding that WTCPUA
26 has disparately greater bargaining power over us.

¹⁰ H. Graham at page 8, lines 3 – 6.

¹¹ DiQuinzio Direct, Exhibit 4 at p. 26; and DiQuinzio Direct at 8:1-2.

¹² Baudino Direct at 26:11 -20.

¹³ WTCPUA asked discovery about the alternative facilities cost, and TCMUD 12's response was timely filed 5 days following the filing of Ms. Graham's direct.

1 **Q. ARE THERE ANY OTHER ALTERNATIVE SUPPLIERS OF WHOLESALE**
2 **WATER SERVICE AVAILABLE TO TCMUD 12 THAT YOU FAILED TO**
3 **FULLY INVESTIGATE WHEN THE PUA CHANGED THE RATES IT**
4 **CHARGES, AS MR. BAUDINO SUGGESTS¹⁴?**

5 A. No. Nothing has changed since we entered into the Wholesale Water Services
6 Agreement with LCRA in 2009. Our investigation at that time was limited to discussions
7 with LCRA about their interest in possibly constructing a new WTP in the Highlands,
8 which LCRA decided was not feasible, or obtaining potable water through the Highway
9 71 water line. LCRA is the sole source of state surface water in the Colorado watershed
10 in which The Highlands is located, and based upon my 32 years of experience in this
11 area, I know that there were not and still are not any other wholesale water service
12 suppliers anywhere that could provide those services to The Highlands. Based on my
13 involvement in the discussions with LCRA at the time, if there had been an alternative
14 supplier LCRA would never have considered expanding its service area, because there
15 would not have been any customers for LCRA to serve. The fact that LCRA explored the
16 possibility of expanding its service area and construction of a new WTP at The Highlands
17 is additional evidence that no other alternatives existed. I've also explained that Lakeway
18 MUD provides wholesale water services for Rough Hollow, and does not have the
19 capacity to provide those services for The Highlands. Rough Hollow's arrangement with
20 LMUD is very lucrative for them, and if they had the capacity to charge for additional
21 wholesale water services, they would jump at the chance.

22 **III. PUA'S DISPARATELY GREATER BARGAINING POWER**

23 **Q. WHY SHOULD THE COMMISSION CONSIDER YOUR TESTIMONY ABOUT**
24 **THE COST OF AN ALTERNATIVE SERVICE SUPPLIER AND WHAT THE**
25 **COST WOULD BE IF TCMUD 12 WERE TO ABANDON ITS INVESTMENT IN**
26 **THE WEST TRAVIS COUNTY WATER SYSTEM NOW THAT THE PUA IS**
27 **OPERATING IT?**

28 A. I understand that the PUC's rules require TCMUD 12 to prove that the rate we are
29 protesting is adverse to the public interest. One of the ways we have demonstrated that is
30 by showing that the PUA has abused its monopoly power by exercising its disparate

¹⁴ Baudino Direct at 16:18 – 20.

- 1 bargaining power to advance its own interests. The PUA is able to abuse its disparate
2 bargaining power because TCMUD 12 does not have an alternative means at a reasonable
3 cost of obtaining wholesale water service. We have demonstrated that the cost of
4 constructing our own WTP and associated facilities would be approximately \$25 million.
5 While WTCPUA disagrees with my cost estimate, it does not disagree that the cost would
6 be significant (Mr. Rauschuber's estimate is \$13.5 million). WTCPUA also agrees that
7 TCMUD 12's additional investment of \$1.5 Million is "substantial" and that it would be
8 imprudent to strand that investment by walking away from the wholesale water services
9 provided by the PUA. In other words, TCMUD 12 does not have an alternative to the
10 wholesale water services provided by WTCPUA, and as I said earlier, no alternatives
11 means no bargaining power.

12 **Q. WERE THE TERMS OF THE TCMUD 12 WHOLESALE WATER SERVICES**
13 **AGREEMENT WITH LCRA "FREELY NEGOTIATED" IN AN "ARMS**
14 **LENGTH TRANSACTION" AS MR. BAUDINO ALLEGES¹⁵?**

15 A. No, as I've already explained, LCRA didn't negotiate with TCMUD 12 because we had
16 no alternative if we wanted to provide potable water to The Highlands. The issue of price
17 was not negotiated, only how long we could stretch out our installment payments, which
18 LCRA demanded in order to reach an agreement. In addition, the provisions of our
19 Wholesale Water Services Agreement that Mr. Baudino discusses,¹⁶ were *not* negotiated
20 as he suggests. LCRA told us what the terms were and it was a "take it or leave it" offer.
21 We took it.

22 **Q. IF THE ALJ AND COMMISSION AGREED WITH MR. BAUDINO'S**
23 **CHARACTERIZATION OF TCMUD 12'S NEGOTIATIONS WITH LCRA,**
24 **WHAT EFFECT DOES THAT HAVE ON TCMUD 12'S CASE?**

25 A. Dr. Zarnikau explains in his rebuttal testimony why the relationship between TCMUD 12
26 and LCRA should not be the focus of examination here, but instead the ALJ and
27 Commission should examine the PUA's actions in setting the wholesale water service
28 rates and conclude that the PUA, TCMUD 12's current supplier, exercised disparate

¹⁵ Baudino Direct at 11:6 and 25.

¹⁶ Baudino Direct at 8:10 – 11:16.

1 bargaining power in setting the 2014 rates, and abused its monopoly power, which is
2 adverse to the public interest.

3 **Q. DO YOU AGREE THAT BY ENTERING INTO THE WHOLESALE WATER**
4 **SERVICES AGREEMENT WITH LCRA, TCMUD 12 MADE LCRA A SOLE**
5 **SOURCE SUPPLIER, AS MR. BAUDINO SUGGESTS¹⁷?**

6 A. No, that is illogical. It was because LCRA was the only wholesale supplier of water
7 services in the area of The Highlands, with the capacity to provide wholesale water
8 service to TCMUD 12, that we looked to LCRA and ultimately entered into a contract to
9 purchase wholesale water services from them.

10 **Q. WHAT IS YOUR REBUTTAL TO MR. BAUDINO' S CHARACTERIZATION**
11 **OF TCMUD 12' S EVALUATION OF OTHER OPTIONS FOR WHOLESALE**
12 **WATER SERVICES¹⁸?**

13 A. Mr. Baudino's characterization rests on flawed reasoning -- the non-existence of
14 documents between TCMUD 12 and third parties regarding the provision of wholesale
15 water services simply indicates there were no third party suppliers of wholesale water
16 services other than LCRA (and now PUA), not that TCMUD 12 failed to evaluate if
17 there were alternatives. It is nonsensical for Mr. Baudino to conclude from these facts
18 that there were "available options" that TCMUD 12 did not explore.

19 **Q. AT THE TIME THAT WTCPUA CHANGED THE WHOLESALE WATER**
20 **SERVICE RATES THAT TCMUD 12 IS PROTESTING IN THIS CASE, WAS**
21 **WTCPUA THE ONLY SUPPLIER OF WHOLESALE WATER SERVICE IN THE**
22 **AREA OF THE HIGHLANDS?**

23 A. Yes, and that is an essential point to understanding our appeal, which the PUA's
24 witnesses attempt to confuse by shifting the focus to LCRA.¹⁹ TCMUD 12 never had a
25 dispute with LCRA about how it set the wholesale water rates it charged us, and we
26 approached the Transfer Agreement to WTCPUA with some trepidation because we
27 wanted to ensure that our rates continued to be set in accordance with the Wholesale
28 Water Services Agreement. But, once WTCPUA took over the operation of the System

¹⁷ Baudino at 15:15.

¹⁸ Baudino at 16:3 – 21.

¹⁹ See, Baudino at 15:15 – 16:21; 21:24 -22:6 (discussing TCMUD 12's dealings with LCRA)

1 and started setting rates as our new supplier, it exercised its disparately greater bargaining
2 power as a monopoly provider, as I discuss in my direct testimony and as explained by
3 Dr. Zarnikau in his testimony.

4 The fact that the new “owners” of the WTCPUA and the West Travis County System
5 were retail customers of LCRA has tilted their rate setting decisions to favor retail
6 customers. Two of the WTCPUA’s Participating Entities, TCMUD 5 and the City of Bee
7 Cave, representing *retail* water customers of LCRA, filed a “rate case” following
8 LCRA’s September 11, 2007 rate increase. Their “logo” was “We’re Getting Soaked”
9 and their rate complaint against LCRA dragged on for four years.²⁰ Once WTCPUA took
10 over operations of the West Travis County Water System, it didn’t take them long to
11 decide that *wholesale* customers rates should be increased substantially based on their
12 rate analyst’s conclusion that “wholesale customers are not paying for their full costs of
13 service” while retail rates were left unchanged.²¹ That decision to raise wholesale
14 customers’ rates but not retail customers’ rates, coming only a few months after
15 WTCPUA took over operations, highlights a critical difference between WTCPUA and
16 LCRA as the operators of the System. WTCPUA’s “owners” who sit on the Board and
17 decide on the rates, represent “retail” customers only. LCRA, on the other hand, had no
18 built-in bias against its customers whether they were retail or wholesale.

19 **Q. PUA’ S WITNESSES TESTIFY THAT IN THE TRANSFER AGREEMENT**
20 **TCMUD 12 NEGOTIATED “ADDITIONAL CONSIDERATIONS” WHICH**
21 **THEY CONCLUDE “SHOWS THAT [TCMUD 12] HAD SUBSTANTIAL**
22 **BARGAINING POWER . . . [AND] ADDITIONAL LEVERAGE.²²” WHAT IS**
23 **YOUR RESPONSE TO THAT CONCLUSION?**

24 **A.** TCMUD 12’s ability to protect its right to reasonably priced wholesale water service
25 under the Wholesale Water Services Agreement, which was being transferred in 2012
26 under an installment purchase plan from LCRA to WTCPUA, was limited to ensuring we
27 continued to receive the benefit of the contract terms we had agreed to with LCRA.

²⁰ See, JAD Exhibit R2 (WTCPUA History, WTCPUA Response to TCMUD 12’s RFA 1-6).

²¹ See, Minutes of Meeting of the Board of Directors of the WTCPUA, Nov. 15, 2012 (D. Rauschuber Direct, Attachment L.)

²² Baudino at 21:3-8; Rauschuber at 16:3 – 18:11.

1 Rather than the Transfer Agreement containing “additional considerations,” the terms of
2 the Transfer Agreement protect the existing considerations reflected in TCMUD 12’s
3 agreement with LCRA, and provide appropriate protection for TCMUD 12 if WTCPUA
4 fails to close on the installment purchase agreement. A “simple assignment” was not
5 appropriate because WTCPUA was not undertaking a simple purchase of the West Travis
6 County Water System from LCRA, but instead entered into a very complex installment
7 purchase agreement.

8 Mr. Rauschuber is now suggesting that the PUA Board thought that the TCMUD 12
9 Transfer Agreement “failed to comply” with the assignment provisions in Section 7.08 of
10 the Wholesale Water Services Agreement. However, not only did the PUA fail to advise
11 TCMUD 12 that was the PUA’s view at the time we were discussing the transfer, there is
12 absolutely nothing in the minutes of the PUA Board meeting which Mr. Rauschuber
13 relies upon that supports that contention. While Mr. Rauschuber testifies that the
14 WTCPUA “felt it was important to obtain TCMUD 12’s written assignment”, implying
15 that somehow gave TCMUD 12 disproportionate bargaining power in this situation, the
16 reality was to the contrary. First, WTCPUA agreed in the “Utilities Installment Purchase
17 Agreement” that WTCPUA had to obtain the consent of TCMUD 12 (and other
18 wholesale customers of LCRA) to the Utilities Installment Purchase Agreement in order
19 for WTCPUA to take over the “Intangible Asset”, i.e., the Wholesale Water Services
20 Agreement.²³ Second, if WTCPUA failed to obtain TCMUD 12’s written assignment,
21 the Utilities Installment Purchase Agreement contained provisions to cover that situation
22 as well. In fact, the two wholesale customers who did not consent to the transfer were
23 charged by WTCPUA the same rates those who consented were charged, *plus* an
24 administrative fee by LCRA. It is impossible to reconcile these provisions of the
25 Installment Purchase Agreement with WTCPUA’s newly crafted theory that TCMUD 12
26 had significant bargaining power in dealing with LCRA and WTCPUA about the
27 transfer. TCMUD 12 complied with the requirement of Section 7.08 that it not
28 unreasonably withhold or delay consenting to the assignment of the Wholesale Water

²³ See, DiQuinzio Direct, JAD Exhibit 8 at 12-13 (Art. III).

1 Services Agreement and ensured it retained the benefit of the bargain it had struck with
2 LCRA.

3 **Q. DO YOU AGREE WITH MR. BAUDINO THAT TCMUD 12 “HAD AN**
4 **OPPORTUNITY TO CHANGE THE QUANTITY OF SERVICES PURCHASED**
5 **FROM THE WTCPUA” WHICH HE CITES IN SUPPORT OF HIS OPINION**
6 **THAT TCMUD 12 HAD “SUBSTANTIAL BARGAINING POWER” ²⁴?**

7 A. No. In addition to Dr. Zarnikau’s rebuttal testimony on this issue, the fact is TCMUD 12
8 was asked if it wanted to *reduce* its maximum capacity under the Wholesale Water
9 Services Agreement, which we were not interested in as I explain in my Direct
10 Testimony at page 11, line 23 through page 12, line 22. It was exactly these types of
11 changes to our rights under the Water Services Agreement that we were concerned about
12 when LCRA transferred operation of the West Travis County Water System to
13 WTCPUA. It didn’t take WTCPUA long after assuming operational control of the
14 system to try to undermine our rights to water services that we had already invested
15 heavily in. That we were able to say “No” to WTCPUA’s request to reduce the amount
16 of services it is obligated to provide to us does not mean we have substantial bargaining
17 power, it means we have a contract, and has nothing to do with WTCPUA’s actions that
18 caused us to file this appeal.

19 **Q. DID WTCPUA’S OBLIGATION UNDER THE INSTALLMENT PURCHASE**
20 **AGREEMENT TO SEEK APPROVAL FOR THE TRANSFER GIVE TCMUD 12**
21 **ANY LEVERAGE²⁵?**

22 A. No. WTCPUA elected to enter into the Installment Purchase Agreement with LCRA
23 which clearly spelled out the need to obtain third party consent for transfer of “Intangible
24 Assets”, which included TCMUD 12’s Wholesale Water Services Agreement. The
25 Installment Purchase Agreement also contemplated what WTCPUA and LCRA would do
26 if a third party, such as TCMUD 12, did not consent to the transfer, which occurred as to
27 two other wholesale customers. Based on what we know about those who did not
28 consent, as Mr. Rauschuber discusses in his testimony, WTCPUA seems to have been
29 made “whole” even for those non-consenting customers who nonetheless receive service

²⁴ Baudino at 21:3-6.

²⁵ Baudino at 21:6-7.

1 from and pay the rates set by, the WTCPUA. TCMUD 12 did not acquire any “leverage”
2 attributable to the terms of the Installment Purchase Agreement, to which TCMUD 12
3 was *not* a party.

4 **IV. REBUTTAL TO OTHER ISSUES REFLECTED IN WTCPUA’S TESTIMONY**

5 **Q. MR. RAUSCHUBER IS EMPHATIC IN HIS TESTIMONY THAT THE**
6 **WHOLESALE WATER SERVICE RATES ADOPTED BY THE WTCPUA**
7 **BOARD THAT ARE THE SUBJECT OF TCMUD 12’S APPEAL RESULTED IN**
8 **A DECREASE.²⁶ WILL YOU PLEASE EXPLAIN WHY TCMUD 12 DECIDED**
9 **TO BRING THE APPEAL OF THE WTCPUA’S RATE DECREASE?**

10 **A.** As we explained in the Petition we filed to start this case, the PUA provided to TCMUD
11 12 the Monthly Charges that would result if the PUA Board adopted the new rate
12 methodology that had been recommended by Ms. Heddin, which showed that the
13 “Minimum Monthly Charge” for TCMUD 12 would increase after 2014 to *at least* the
14 following levels:

15	2015	\$16,775.17
16	2016	\$28,547.06
17	2017	\$38,247.52
18	2018	\$47,947.98
19	2019	\$61,954.99
20	2020	\$72,380.10
21	2021	\$82,805.22
22	2022	\$93,230.34
23	2023	\$103,655.46
24	2024	\$104,251.18

25 I emphasize that we understood the new rate methodology would increase the monthly
26 charge to at least those levels, because the amounts could be higher if WTCPUA required
27 additional capital or if financing costs were higher than they had projected. Because

²⁶ D. Rauschuber Direct at p. 31, line 13 page 32, line 4.

1 WTCPUA was changing its revenue requirement and rate methodology, as Jay Joyce
2 explains in his testimony, and we understood the PUA intended to keep using that new
3 methodology, we needed to initiate the appeal challenging the 2014 rates even though
4 they were lower, or potentially lose the opportunity to challenge the implementation of
5 the new rate methodology in future years when the rates were going to increase
6 significantly. In fact, WTCPUA increased our monthly minimum bill effective March 1,
7 2015 to \$13,328.35, which is \$5,000 higher than the 2014 Protested Monthly Rate,
8 representing a 64% increase, and about \$ 2,500 higher than the 2013 Monthly Rate.

9 By providing this rebuttal to Mr. Rauschuber's testimony about the rate decrease in 2014,
10 I intend to explain the basis for originating this Appeal. As Dr. Zarnikau testifies, when
11 an entity has a sustainable ability to control prices or quantities supplied in a market, as
12 WTCPUA does, and has abused that power, the public interest requires that the
13 regulatory authority assume oversight of the prices (rates). That is our goal – to have this
14 Commission, after hearing the evidence we are presenting and finding that the
15 WTCPUA's actions are adverse to the public interest, require WTCPUA to put on a cost
16 of service case.

17 **Q. DO YOU HAVE ANY OVERALL OBSERVATIONS ABOUT THE PUA'S**
18 **TESTIMONY THAT YOU ARE REBUTTING?**

19 **A.** Yes. The terms that the PUA's witnesses use contradict the contractual arrangements
20 between the parties, and appear calculated to mislead. I will give two examples.

21 First, the PUA insists on referring to the "wholesale water services" that the PUA
22 provides to TCMUD 12 pursuant to Wholesale Water Services Agreement, as "wholesale
23 water *treatment* services."²⁷ The Wholesale Water Services Agreement defines
24 wholesale water services as "the diversion of raw water from the Colorado River, the
25 transmission of the raw water to a place or places of treatment, the treatment of the water
26 into potable form and the transmission of the potable water to the Delivery Point." So,
27 PUA's insistence on referring to the services it is providing as merely water treatment

²⁷ See, D. Rauschuber Direct at 8:19, 22, 26; at 11:12; at 12:6-7, 12; at 13:2' at 18:22, 23; at 19:21; at 20:4, 15, 20, 23; at 21:3-4, 15; at 22:2-3, 5, 20; at 23:2-3, 24:36; at 26:20; at 27:1, 4, 20; and at 33:13-14, 25. See also R. Baudino Direct at 4:18, 21; at 5:4, 7, 18-19, 21; at 8:3, 9, 10; at 9:2. 20-21; at 24:5; and at 28:4-5, 9.

1 services mis-characterizes and minimizes the scope of services actually provided. The
2 PUA is contractually obligated to provide to TCMUD 12 not only the treatment of the
3 raw water that we purchase from LCRA, but also (1) diversion of the water from the
4 Colorado River, (2) transmission of the raw water to the treatment plant; (3) then
5 transmission of the potable water to our Delivery Point; (4) in the quantity and at the
6 pressure specified in Section 3.03 of the Wholesale Water Services Agreement. The
7 PUA's repeated reference to the service they provide as water "treatment" services,
8 leaves the impression that they are unaware of their contractual obligation to provide
9 these other water services. Since TCMUD 12 is charged by the PUA for Wholesale
10 Water Services, not just for wholesale water treatment services, the PUA's use of the
11 latter term should not be accepted because it is mis-leading, and fails to accurately
12 describe the services for which TCMUD 12 is being charged by PUA.

13 Second, the PUA also persists in erroneously referring to the Agreement Regarding
14 Transfer of Operations of the West Travis County Water System from the LCRA to the
15 WTCPUA executed by LCRA, WTCPUA and TCMUD 12 as the "2012 Amendment."²⁸
16 This is particularly confounding because the Transfer Agreement states unequivocally:
17 "Nothing contained in this Agreement will be deemed or construed to amend, diminish or
18 affect the District's rights, the obligations of the LCRA or the obligations of the PUA, as
19 the LCRA's assignee, under the Water Services Contract."²⁹ The minutes of the PUA's
20 Board meeting at which it approved the Agreement Regarding Transfer do not refer to it
21 as an amendment, but Mr. Rauschuber persists in that mis-characterization even when
22 referring to the Board's action on the Agreement Regarding Transfer.³⁰ The Transfer
23 Agreement was not an amendment to the Wholesale Water Services Agreement and the
24 PUA's insistence on labeling it as such is indicative of its power in dealing with TCMUD
25 12. The PUA's repeated references to the Transfer Agreement as the "2012 Amendment"

²⁸ See, D. Rauschuber Direct at 8:17; at 13:9; at 17:5, 7, 9, 11, 13, 16, 18, 22; at 18:1, 8, 10; and at 32:14-15. See also R. Baudino Direct at 7:6, 18, 19, 20-21; at 8:3; 20:2, 4, 8; at 25:22-23; and at 30:12.

²⁹ See, JAD Exhibit 5 at p. 2 (para. 1, last sentence).

³⁰ Contrast: D. Rauschuber Attachment K (bates WTCPUA 00000136) to Rauschuber Direct at 18:8 – 10 ("The Board approved the Amendment (sic) at the May 3, 2012 Board meeting. The Board of Directors decided to accept TCMUD 12's additional terms, approving the 2012 Amendment (sic) at that May 3, 2012 meeting.")

1 can be easily confused with the PUA's attempt to get TCMUD 12 to agree to *amend*
2 TCMUD 12's Wholesale Water Services Agreement to reduce the maximum reserved
3 capacity. TCMUD 12 did not agree to the PUA's requested amendment, as I explain in
4 my direct testimony.³¹ The PUA entered into amendments with several other wholesale
5 water services customers, but not with TCMUD 12.³² Here again, the PUA's repeated
6 reference to the Transfer Agreement as the "2012 Amendment" is not only contrary to the
7 plain terms of the Transfer Agreement, it appears calculated to confuse the record and
8 mislead the trier of fact into erroneously concluding that TCMUD 12 had bargaining
9 power or leverage in its dealings with the PUA.³³

10 **Q. DID TCMUD 12 AMEND ITS WHOLESALE WATER SERVICES AGREEMENT**
11 **WHEN IT EXECUTED THE AGREEMENT TO TRANSFER WITH LCRA AND**
12 **WTCPUA?**

13 A. No, we agreed to the transfer under the terms and conditions as set out in the Transfer
14 Agreement, but explicitly did not agree to amend the Wholesale Water Services
15 Agreement.

16 **Q. DOES WTCPUA PROVIDE ONLY WHOLESALE WATER TREATMENT**
17 **SERVICE TO TCMUD 12?**

18 A. No, WTCPUA supplies TCMUD 12 with diversion of raw water from the Colorado
19 River, transmission of that raw water to the Water Treatment Plant, treatment of the raw
20 water at the Water Treatment Plant, and transmission of the potable water from the Water
21 Treatment Plant to TCMUD 12's Delivery Point in the quantities and at the pressure
22 specified in the contract. WTCPUA charges, and TCMUD 12 pays, rates for all of these
23 wholesale water services.

24 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

25 A. Yes, but I reserve the right to present live rebuttal at the hearing as necessary for a
26 complete record.

³¹ DiQuinzio Direct at 11:28 – 12:22.

³² WTCPUA Responses to RFP 1-10 and 1-14; *See*, D. Rauschuber at 25:6 – 26:5.

³³ *See*, Rauschuber Attachment R at Bates WTCPUA00002544-45 (VIII.C.)

SOAH Docket No. 473-14-5144.WS, Docket No. 42866
TCMUD 12's Responses to WTCPUA's 2nd RFIs
Question No. 2-14
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QUESTION NO. 2-14

Refer to page 5, lines 28-30.

- a. Identify the source of the referenced \$25,520,000 amount.
- b. Provide all documents relating to the referenced cost of constructing diversion, transmission and storage facilities.

TCMUD 12'S RESPONSE:

Please see Attachment 2-14.

Prepared by: Miguel A. Huerta
Witness: Joseph A. DiQuinzio

Docket No. 42866
TCMUD 12 Resp to WTCPUA 2nd RFIs
Attachment TCMUD 12 RFI 2-14
Page 1 of 3

Joe DiQuinzio

From: Douglas Rummel Jr <dougjr@cbdeng.com>
Sent: Monday, February 09, 2015 1:24 PM
To: 'jadco@austin.rr.com'
Subject: FW: Water Treatment Plant

From: Kenneth Wheeler [<mailto:Kenneth.Wheeler@cedarparktexas.gov>]
Sent: Tuesday, October 28, 2014 8:30 AM
To: Douglas Rummel Jr
Subject: RE: Water Treatment Plant

Doug,

I haven't done a whole lot of water treatment plants, but if I had to come up with a ballpark number, I would use about \$5 per gallon. The BCRUA WTP, which was 17 MGD for the first phase (some ultimate capacity oversizing of piping and other facilities), had an engineer's estimate of about \$4.50 per gallon and actual costs of about \$4.00 per gallon. For a smaller plant, the \$5 per gallon is probably more realistic. This does not include the floating intake. Our actual costs for the BCRUA floating intake (also 17 MGD capacity) was about \$6 million. I'm not sure you can use a price per gallon for the intake. My suggestion would be to talk to Randal Park at Excel Construction. They have built a lot of floating intakes and would have a better idea of cost. Hope this helps.

Kenneth Wheeler, P.E.
Assistant Director of Utilities
City of Cedar Park
2401 Brushy Creek Loop
Cedar Park, TX 78613
512-401-5584

From: Douglas Rummel Jr [<mailto:dougjr@cbdeng.com>]
Sent: Tuesday, October 28, 2014 7:28 AM
To: Kenneth Wheeler
Subject: Water Treatment Plant

Good morning Kenneth,

This is a little bit of a strange request and not City related at all but I have been tasked with coming up with some high level numbers for a water treatment plant in western Travis County for some MUDs. My hope was that you might have some ballpark idea of what a water treatment plant costs might be per gallon? I am looking at around a 4 MGD plant that will have a raw water barge coming out of the lake. Any assistance you could lend on this would be appreciated. If you know of anyone else that might have some input, that would also be appreciated. Thanks

Carlson, Brigrance & Doering Inc.

F3791
Douglas Rummel, Jr., P.E., R.P.L.S.
Vice-President
5501 West William Cannon
Austin, TX 78749
(O) 512-280-5160

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TCMUD 12 Resp to WTCPUA 2nd RFIs
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Page 2 of 3

(C) 512-627-6417
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www.cbdeng.com

**WATER TREATMENT PLANT
PRELIMINARY BUDGET
OCTOBER 2014**

Docket No 42866
TCMUD 12 Resp to WTCPUA 2nd RFIs
Attachment TCMUD 12 RFI 2-14
Page 3 of 3

	DESCRIPTION	QTY	UNIT	UNIT COST	TOTAL COST
I.	WATER PLANT				
	4 MGD Plant (Peak Day Demand)	4,000,000	GAL/DAY	\$5.00	\$20,000,000.00
	Raw Water Pipe (15")	15,000	LF	\$80.00	\$1,200,000.00
	Barge	1	LS	\$2,000,000.00	\$2,000,000.00
	Total				\$23,200,000.00
	Engineering & Permitting (10%)	1	LS	\$2,320,000.00	\$2,320,000.00
	TOTAL COST				\$25,520,000.00

Request for Admission 1-6. Admit or deny that Exhibit F attached hereto is the West Travis County PUA History that accurately reflects information concerning the creation of the PUA.

Response: Admit.

WEST TRAVIS COUNTY PUA History

The West Travis County Regional Water and Wastewater System was created in 2000. The Lower Colorado River Authority purchased The Uplands Water System, which had been created originally by Barnes-Connally in the late 80's and evolved through the Regional Transportation Commission (RTC), the Nature Conservancy, and the Lake Pointe Wastewater Plant, being built for Lake Pointe MUD No. 5 by the developer.

In 2002, the Village of Bee Cave was already raising objections to LCRA rates.

In a letter to customers under a monopolistic LCRA water and, in some cases, a wastewater utility, dated June 11, 2007, customers were informed of a proposed two years of 25% annual rate increases in water and wastewater services. Despite customer objections, the first increase was implemented September 11, 2007. At the next meeting of the West Travis County Municipal Utility District No. 5 (MUD No. 5) in Lake Pointe subdivision it was decided to launch a petition drive for a rate case suit to the Texas Commission on Environmental Quality (TCEQ). It was implemented October 3, 2007 under the logo, "We're Getting Soaked". The TCEQ has oversight for water and wastewater utility rates and operations in Texas. MUD No. 5 was soon joined by its sister Lake Pointe organization West Travis County MUD No. 3 (MUD No. 3) and through the adjacent Uplands subdivision, by its municipality, the City of Bee Cave.

A suit was soon filed. Partially in response, LCRA proposed spreading the two year rate increases over three years.

It was two years until a Texas Administrative Law Judge was appointed to hear testimony for the rate case suit. An early decision of the Judge froze the rates at the 2008-2009 rate increase (known as the Phase 2 rate). Testimony and filings were conducted over the next two years with the plaintiffs consistently winning their points.

The LCRA Board soon tired of the ongoing legal proceedings and expenses. In November 2010, they decided to put their water and wastewater retail businesses up for sale.

In January 2011 communities up and down the Lower Colorado River began to organize. An LCRA Coalition was created. To provide an umbrella, the Coalition of Central Texas Utilities Development Corporation (UDC) was formed and Pix Howell emerged as the President. Pix was a former LCRA Board member who advocated getting into the retail business in the mid-1990's, but was disturbed by what had evolved and was working for the City of Leander to purchase their system from LCRA.

During the 82nd Legislature, MUD No. 5 received authorities to own and operate the WTC Regional Water and Wastewater System in Western Travis County and Northern Hays Counties, a system that was largely stand alone.

In May 2011 LCRA conducted (with the Bank of Montreal) a bidder qualification round. It took the UDC some advanced dialog to get on the accepted list. Then in August 2011 bids were due. Initially the UDC bid was felt to be too low.

With the assistance of Senator Watson, a meeting was arranged between the Chairman of the LCRA Board of Directors, Tim Timmerman; the General Manager of LCRA, Becky Motal; UDC Founders Pix Howell, Hays County Commissioner, Ray Whisenant, Bee Cave City Administrator, Frank Salvato, and UDC Attorney, Lauren Kalisek. The purpose was to explain how and why the UDC bid would make LCRA whole. These meetings took place over October and November 2011.

At the November 21 LCRA Board of Directors meeting, a resolution was passed by the LCRA Board authorizing the General Manager and staff to negotiate a sale document with the UDC for signature by December 15, 2011. Negotiations continued into early 2012. LCRA insisted on the termination of the Rate Case as a condition of sale. Both sides were left to absorb their own costs. The freezing of the rates at Phase 2 during the case saved customers approximately \$5 million, compared to the legal fees of \$1.3 million.

In the meantime, the West Travis County Public Utility Agency (PUA) was duly constituted and created by Hays County, the City of Bee Cave and MUD No. 5. While negotiations continued until the last day, a purchase agreement was executed by the Chair of the PUA and the General Manager of the LCRA. On January 20, 2012, the MUDs' attorney, Randall Wilburn, and the City of Bee Cave attorney, James Mathews, signed the request to the TCEQ to terminate the case.

A private company operator has been contracted to handle all day to day operations, billing, etc. LCRA bonds will be paid off in 2013, 2014, 2017 and 2019 by the issuance of bonds for the PUA. Operating expenses and bond payments will be offset substantially by savings so that rates are expected to rise by no more than 3% per year, instead of the 50 - 75% increases that alternatives would have created.

Source: <http://www.wtcpu.org/about-wtc>