



Control Number: 42866



Item Number: 151

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**.SOAH DOCKET NO. 473-14-5244.WS
PUC DOCKET NO. 42866**

2015 JUN 26 PM 1:10

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

FILED
FILING CLERK

CLOSING ARGUMENT OF THE CITY OF BEE CAVE

COMES NOW, the City of Bee Cave, Texas, and files this Closing Argument in this matter.

VII. DOES THE PROTESTED RATE EVIDENCE WTCPUA'S ABUSE OF MONOPOLY POWER? (P.U.C. Subst. R. 24.133(a)(3))

B. Disparate Bargaining Power of the Parties (P.U.C. SUBST. R. 24.133(a)(3)(A))

1. What Are TCMUD 12's Alternative Means, Alternative Costs and Problems of Obtaining Alternative Wholesale Water Services?

Petitioner's witness DiQuinzio, testified that the cost to construct a water treatment plant intake facility and transmission lines would be prohibitive, meaning that he believed that that MUDs 11, 12, and 13, did not have the capital to construct such facilities. [Tr. 14 and 30]

Mr. DiQuinzio stated that the cost to MUD 12 of constructing its own water treatment plant for the Highlands would have been \$25.2 million. This analysis was done just days before MUD 12's pre-filed testimony was due in this case. [Id. at 67.] This estimate of the cost to MUD 12 for building its own system lacks professional analytical rigor. Notably, the PUC Staff witness concluded that the supporting documentation provided for how that estimate was calculated was not sufficient to enable her infer that this approach to obtaining alternative water service would be prohibitively expensive. [Tr. 418] Petitioner's attorney pursued a line of questioning aimed at challenging Ms. Graham's expertise and credibility on this point. But in light of Mr. DiQuinzio's explanation for that calculation [Tr. 96 - 97], Ms. Graham's conclusion does not really demand the application of expertise and does not challenge credulity.

In 2009, 2010, 2011, and 2012, no officials, employees, representatives, or contractors of MUD 12 discussed or met with officials, employees, representatives, or contractors of any water treatment service providers other than the LCRA for wholesale treated water services. [Tr. 61 - 63]

According to Mr. DiQuinzio, there were no other alternate water treatment service providers or wholesale water supply providers to discuss those kinds of alternatives with at that time. [Tr. 64.]

Mr. DiQuinzio knew that the City of Austin has a plant on Lake Travis, but gave no explanation of efforts to seek a service contract with the City of Austin. [Id.]

Mr. DiQuinzio took a pretty firm stand that Lakeway MUD could not be a viable

permission to Lakeway MUD. [Id.] Between January 1, 2009, until March 6, 2014, MUD 12 never provided Lakeway MUD with a written request for additional water services. [Tr. V. 1, p. 66.]

We are left to wonder why infrastructure that can satisfy MUD 12's needs during a short term emergency cannot also do so over a longer term.

MUD 12 did not really explore the possibility of adding infrastructure at the location of the Hurst Creek MUD infrastructure barge, even though, at least from an engineering/construction standpoint, it could be done. [Id. at 124]

MUD 12 did not talk to anyone, other than Lakeway MUD, about adding infrastructure or working together to add infrastructure so that the cost to MUD 12 could possibly be substantially less than \$25.2 million. [Id. at 124 – 125]

Mr. DiQuinzio's testimony suggests that MUD 12 did not do a very comprehensive job of seeking alternatives. Mr. DiQuinzio does not know how many public water supplies are located along the shores of Lake Travis, or how many of those systems have raw water intakes in Lake Travis, or how many of those systems have their own surface water treatment plants. [Tr. V. 1, p. 79.]

Thus, it is not possible to know whether MUD 12 truly had viable alternatives when it set out to obtain water services. Whether there might be viable alternatives now is also uncertain. Of course, MUD 12's current contract with the PUA overshadows current alternatives.

2. Are There Other Disparate Bargaining Power Factors?

MUD 12's primary point about disparate bargaining power seems to be that the PUA was unwilling to meet with them and/or that the PUA was intransigent and would not yield on any important objection that MUD 12 had regarding the protested rates.

The PUA held a number of wholesale customer meetings in 2013. Mr. Raushuber, manager of the PUA, testified that the Wholesale Customer Committee had multi-hour meetings in which there was a lot of exchange of information, ideas and thoughts of how to design rates for the wholesale customers, and about the PUA, about the history of the PUA and the nature of the water and sewer system that the PUA purchased from LCRA. [Tr. 388 – 389] That characterization was not truly challenged.

3. Conclusion: If there was disparate bargaining power, does the protested rate evidence WTCPUA's abuse of monopoly power?

Because MUD 12 really has not explored alternatives, it certainly believes that the PUA is a monopoly and has disparate bargaining power. MUD 12 did not attend some meetings, and is no less responsible for a communication breakdown than the PUA might be. MUD 12 found it acceptable to sit back and wait. That is not abuse by the PUA.

The protested rate does not evidence abuse of monopoly power. The absence of any statement that the resulting rates are unfair, unjust or unreasonable is stark. It's one thing to say rates are going up (in future years). It's another position altogether to be upset that, for the first time, MUD 12 will be responsible for O&M expenses (as one example).

C. Methodology for Computation of Revenue Requirement and Rate (P.U.C. SUBST. R. 24.133(a)(3)(C))

1. Did WTCPUA change the methodology for the computation of the revenue requirement?

P.U.C. SUBST. R. 24.129(3) and (4) provide definitions for the cash basis and utility basis calculations of cost of service, respectively.

PUA witness Stowe reviewed the 2012 Rate Study Report prepared by Water Resources Management, LLC, a consultant for WTCPUA. He observed that the developed revenue requirement included both principal and interest for debt service and did not include depreciation expense or return on investment. He testified that this is indicative of the cash basis methodology. [Stowe Pre-filed 11 – 12]. This seems in line with the Rule 24.129(3).

Mr. Stowe also reviewed the presentation materials and work papers of the PUA consultant used by the PUA to set the 2013 Rates. There, he also observed the presence of principal and interest on debt service and the absence of depreciation and return on investment. He concluded that this is indicative of the cash basis methodology being used to establish the revenue requirement for the protested rates in this case. [Stowe Pre-filed 11 – 12]. This also seems in line with the Rule 24.129(3), and suggests that the methodology did not change from one rate study to the next.

by the following exchange during cross examination.

Joyce: ..Again, I think we can't determine abuse of monopoly power by just looking at specific little facts in a vacuum. We have to look at that in totality.

Question ..And that's what I'm asking you to do. I changed my much earlier question and said aggregating all of the changes in methodology, whatever they are, if the net result from aggregating all of those changes is beneficial to your client in this rate year, the one that this case applies to, is that an abuse of monopoly?

Joyce: ..And I said you can't answer -- that question cannot be answered in a vacuum. You have to look at the totality of the effect. Because anybody can set up a new methodology that had a low year one and then a skyrocketing situation. So it's not possible to answer whether the methodology is abusive or an abuse of monopoly power just based on the results from one year. [Tr. 191 – 192]

2. Did WTCPUA change the methodology for the computation of the rate?

The analysis of this question is similar to the question about changed methodology for computation of the revenue requirements. There are differences from year to year. The values of components may change, but the methodology does not.

3. Conclusion: If there was a change in the methodology for the computation of the revenue requirement or rate, does the Protested Rate evidence WTCPUA's abuse of monopoly power?

No one has been so bold as to say that it is unfair to continue allocating 0% of the miscellaneous expenses (as another example) to MUD 12, when those expenses clearly are used and useful in providing the service to MUD 12. The other allocations in the revenue requirement are also just as reasonable. The “totality of the effect” mentioned in Mr. Joyce’s testimony did not give rise to a hue and cry about unreasonable, unjust or unfair rates. No one said that other customers in the system are getting unreasonable preferential treatment because of this rate change. Nothing of this sort has been mentioned.

There was no abuse of monopoly power.