

Order No. 6 addressed “whether supporting documents are discoverable—not whether the documents are admissible.”¹⁸¹ The fact that this information was determined to be *discoverable* by the Commission does not make it *relevant*. TCMUD 12’s attempt to make cost of service relevant in this hearing, in general, through the overturning of SOAH Order No. 6, concerning discovery, should be rejected. WTCPUA did not change the methodology for the computation of the revenue requirement in the Protested Rates.

2. Response to TCMUD 12’s Cost of Service Analysis.

It is uncontroverted that the revenue requirement methodology used to set the rates effective as of March 19, 2012 (“Prior Rates”) and the Protested Rates was the cash needs basis.¹⁸² Amusingly, TCMUD 12 attempts to confuse this topic by arguing that the WTCPUA is mistaken that there are only two revenue requirement methodologies- the cash basis and the utility basis.¹⁸³ First, the WTCPUA has not made such assertion at any point in this proceeding. Rather, the WTCPUA and its expert witness, Jack Stowe, have repeatedly explained that two *predominant* revenue requirement calculation methods are the cash basis and the utility basis.¹⁸⁴ The portion of Stowe’s testimony to which TCMUD 12 cites is merely Stowe’s quotation of 16 TAC § 24.135(b) that references only the cash basis and utility basis. Second, Stowe never indicated that these were the *only* two methodologies. In fact, during the hearing, Stowe explained that there are other methodologies in addition to the ones cited in the rule.¹⁸⁵ To this end, one of TCMUD 12’s own exhibits, which is a response to a request for information

¹⁸¹ TCMUD 12’s Appeal of Order No. 6 at 2 (Oct. 10, 2014).

¹⁸² Direct Testimony of Jack Stowe, WTCPUA Ex. 3 at 11-13; Tr. at 399:19-23 (Graham Cross) (Apr. 22, 2015); Tr. at 199 (Apr. 21, 2015); WTCPUA Ex. 4 at RFA No. 1-7.

¹⁸³ TCMUD 12’s Initial Brief at 44-46.

¹⁸⁴ Direct Testimony of Jack E. Stowe, WTCPUA Ex. 3 at 10:10-12; WTCPUA’s Initial Brief at 62-63.

¹⁸⁵ Tr. at 360:19-361:1 (Stowe Cross) (Apr. 22, 2015).

sponsored by Stowe, demonstrates Stowe's recognition that there are more than two revenue requirement methodologies.¹⁸⁶

While all parties agree to the fact that there are more revenue requirement methodologies other than the cash basis and utility basis, TCMUD 12's interpretation requires consideration of the "formulas and methodologies that are used to derive the figures in the revenue requirement or rates," contrary to 16 TAC § 24.133(b).¹⁸⁷ TCMUD 12's interpretation equates a change in *allocation* of components of the revenue requirement to a change in the *methodology* used to calculate the revenue requirement. Both WTCPUA witness Stowe and Commission Staff witness Graham believe TCMUD 12 is misinterpreting the rule.¹⁸⁸

However, TCMUD 12's interpretation of a revenue requirement methodology requires an examination of how the various components of the revenue requirement are *allocated*. TCMUD 12 does not try to disguise the fact that these alleged changes in methodology are allocation changes, citing numerous alleged *allocation* changes in its brief.¹⁸⁹ These allocations divide costs amongst service functions and/or customer classes, which is part of the determination of the cost of service.¹⁹⁰

Different allocations are not revenue requirement methodologies. The AWWA M1 Manual provides a clear depiction of the three-step process for cost-based ratemaking.¹⁹¹ Even TCMUD 12 witness Joyce agrees that a "cost of service study" is different than "cost of service"

¹⁸⁶ Rebuttal Testimony of Jay Joyce, TCMUD 12 Ex. 5 at 67 (JJJ Exhibit R5).

¹⁸⁷ TCMUD 12's Initial Brief at 46.

¹⁸⁸ Tr. at 363:21-22 (Stowe Cross) (Apr. 22, 2015); Direct Testimony of Heidi Graham, Staff Ex. 1 at 10:13-15.

¹⁸⁹ TCMUD 12's Initial Brief at 47.

¹⁹⁰ Direct Testimony of Jack E. Stowe, WTCPUA Ex. 3 at 26:11-13.

¹⁹¹ WTCPUA Ex. 73 at 5.

and that a “cost of service study” has several parts to it.¹⁹² Figure 1.1-1 in the AWWA M1 Manual indicates the three-step process for ratemaking:

- (1) Revenue Requirement Analysis—“Compares the revenues of the utility to its operating and capital costs to determine the adequacy of the existing rates to recover a utility’s costs”
- (2) Cost-of-Service Analysis—“*Allocates* the revenue requirements to the various customer classes of service in a fair and equitable manner”
- (3) Rate-Design Analysis—“Considers both the level and structure of the rate design to collect the distributed revenue requirements from each class of service”¹⁹³

The only portion of the ratemaking process that includes *allocation* is the cost-of-service analysis. Regardless of how the utility *allocates* the revenue requirement in the cost-of-service analysis, the revenue requirement number computed in the first step will remain the same. However, if a different methodology was used to compute the revenue requirement, the utility’s revenue requirement could be higher or lower from year to year. The rule seeks to protect customers from this type of situation where the total revenue requirement could fluctuate based on the methodology used.

In contrast, in the second step, the allocation of the revenue requirement in the cost of service process assigns portions of the revenue requirement to each customer class based on the cost to serve each customer. The analysis of this determination of cost of service is specifically prohibited by the rule. Whether the utility changed the allocation of the revenue requirement is not a change in methodology relating to the first step revenue requirement analysis. Rather, this allocation change is part of the second step costs of service analysis, which cannot be examined in determining whether the rates are adverse to the public interest.

¹⁹² Tr. at 153:8-13 (Joyce Cross) (Apr. 21, 2015).

¹⁹³ WTCPUA Ex. 73 at 5 (emphasis added).

Furthermore, TCMUD 12 argues that the base-extra capacity method was used to set the Prior Rates and that “methodology” was changed in setting the Protested Rates.¹⁹⁴ *Looking to the AWWA M1 Manual, the base-extra capacity methodology is specifically listed as a methodology used in the cost-of-service analysis, the second step of the rate-making process that, again, cannot be examined when determining whether rates are adverse to the public interest.*¹⁹⁵ An analysis of the cost of service methodology does not fall under the first step of the rate-making process—the revenue requirement analysis—and should not be considered as a revenue requirement methodology.

TCMUD 12’s argument that the revenue requirement methodology changed is based on TCMUD 12’s contention that the Wholesale Water Services Agreement provides that costs attributable to the provision of retail water service should not be included in TCMUD 12’s rates.¹⁹⁶ In reality, this claim is an assertion of an alleged breach of contract, not an assertion of a methodology change. If TCMUD 12 believes that the Protested Rates were set in violation of the Wholesale Water Services Agreement, TCMUD 12’s remedy is to bring a breach of contract claim against WTCPUA. The rule (16 TAC § 24.133) is not intended to govern situations where one party claims that the rates were not set pursuant to the contract. The Commission does not have jurisdiction to adjudicate a breach of contract claim.¹⁹⁷

3. Response to WTCMUD No. 5’s Analysis of the Protested Rates.

WTCMUD No. 5 incorrectly states that the Initial Rates adopted by the WTCPUA were not adopted based on any methodology.¹⁹⁸ As indicated in the Direct Testimony of Rauschuber

¹⁹⁴ TCMUD 12’s Initial Brief at 47-48.

¹⁹⁵ WTCPUA Ex. 73 at 6.

¹⁹⁶ TCMUD 12’s Initial Brief at 47.

¹⁹⁷ 16 TAC § 24.131(d).

¹⁹⁸ West Travis County Municipal Utility District No. 5’s Initial Brief at 9-10 (June 26, 2015). (WTCMUD No. 5’s Initial Brief).

and the WTCPUA Board minutes, the WTCPUA approved the prior rates based on the study done by the WTCPUA's analyst, Ms. Nelisa Heddin ("Heddin"), using the Cash Basis revenue requirements methodology. Heddin's study showed that a 31% increase was needed to cover the full cost of service, but she explained that the WTCPUA could sustain a 15.5% increase for 2012.¹⁹⁹ She further explained that the increase needed in 2013 to cover costs could be more than the remaining 15.5% of the full 31% increase needed.²⁰⁰ During the hearing, WTCPUA witness Rauschuber also explained that the Prior Rates were not merely based on a 15.5% increase over prior rates, but rather, were based on a rate study performed by Heddin.²⁰¹ Therefore, the prior increase was based on a specific rate methodology, using the cash basis as detailed in the rate study prepared by Heddin. The rate adjustment in 2012 was not merely a 15.5% increase to the LCRA rates as WTCMUD No. 5 alleges.

B. WTCPUA Did not Change the Methodology for the Computation of the Rate.

1. There was no change in rate structure.

In its Initial Brief, TCMUD 12 concedes that WTCPUA's rates included a minimum monthly charge and a volume charge, just as TCMUD 12 witness Joyce did at the hearing.²⁰² TCMUD 12 goes on to note that this methodology is consistent with the Wholesale Water Services Agreement and common utility practice.²⁰³ However, TCMUD 12 incorrectly claims that there can be a change in the rate methodology that goes beyond the rate structure imposed, looking into the actual computation of the rate itself.²⁰⁴

¹⁹⁹ Direct Testimony of Donald G. Rauschuber, P.E., WTCPUA Ex. 1 at 20 (Attachment L at 6-7).

²⁰⁰ *Id.*

²⁰¹ Tr. at 375:21-376:3 (Rauschuber Cross) (Apr. 22, 2015).

²⁰² Tr. at 168:21-25 (Joyce Cross) (Apr. 21, 2015); TCMUD 12's Initial Brief at 48.

²⁰³ TCMUD 12's Initial Brief at 48.

²⁰⁴ *Id.*

The AWWA M1 Manual explains that the rate design analysis examines the “different *rate structures* that may be used to collect the appropriate level of revenues from each customer class of service.”²⁰⁵ A change to the “rate structure” would be a change in methodology. However, all three expert witnesses agreed that the rate structure for the Prior Rates and the Protested Rates was a monthly charge and a volume rate.²⁰⁶ In spite of that agreement, TCMUD 12 attempts to argue that a change in the allocation of costs to customers that are used as the inputs to be separated into the rate design amounts to a change in methodology.²⁰⁷

TCMUD 12 cites to *Corsicana* as the basis for its contention, quoting the Proposal for Decision (“PFD”) wherein the ALJ explained: “[g]iven the common meaning of methodology and the AWWA Manual’s use of the term ‘methodology’ when referring to rate designs, the ALJ concludes that 30 TAC § 291.133(a)(3)(C) is broad enough to include changes in the method of computing a rate design.”²⁰⁸ In that case, the change to the rate methodology was a change in the rate structure. The rate structure was changed from a flat rate to inclining-block gallonage rate. However, the PFD did not address a change in the allocation of costs that fed into the flat rate or inclining-block rates. In contrast to *Corsicana*, the WTCPUA maintained a volumetric and minimum charge, but changed only the allocation of the revenue requirement components allocated between the volumetric and minimum charge. Such an examination of the way costs are allocated to each customer to subsequently be assigned between the monthly charge and volume charge is an examination of the cost of service because it is an examination of the

²⁰⁵ WTCPUA Ex. 73 at 6 (emphasis added).

²⁰⁶ Tr. at 168:21-25 (Joyce Cross) (Apr. 21, 2015); WTCPUA Ex. 4 at RFA No. 1-8; WTCPUA Ex. 6 at RFA Nos. 3-1 and 3-2; WTCPUA Ex. 5 at RFA Nos. 2-1, 2-2, 2-3, and 2-4; Direct Testimony of Heidi Graham, Staff Ex. 1 at 11:3-10; Direct Testimony of Jack E. Stowe, WTCPUA Ex. 3 at 17:1-23.

²⁰⁷ TCMUD 12’s Initial Brief at 48.

²⁰⁸ TCMUD 12’s Initial Brief at 48, citing *Navarro County Wholesale Rate Payers et. al. v. City of Corsicana*, TCEQ Docket No. 2009-1925-UCR, Proposal for Decision at 56 (Aug. 17, 2011) (PFD).

allocation of costs according to the costs to serve each customer. Thus, this is not appropriate to examine in this case.

2. TCMUD 12's arguments regarding rate methodology are all related to cost of service cost allocation principles.

TCMUD 12 cites to various pieces of correspondence from the WTCPUA that use the word "methodology," claiming that the use of this term indicates that the WTCPUA was changing its "rate methodology."²⁰⁹ As addressed above, the term "rate methodology" as used in 16 TAC § 24.133(a)(3)(C) refers to the rate structure. In the various correspondence referenced by TCMUD 12, the WTCPUA was using the term "rate methodology" in a broader context rather than a technical term. Regardless of statements made in this broader context, as explained in this brief, the actual analysis of the rate allocation shows that there was no change to methodology. The changed "methodology" referred to by the WTCPUA was the underlying allocation methodologies that made up the second step of the rate-setting process before being divided into the rate structure or rate design.

Each of the references TCMUD 12 makes to the WTCPUA's use of the term "methodology" are referring to cost allocation methodologies and should not be interpreted to relate to a revenue requirement or rate methodology. For example, TCMUD 12 notes that a letter from the WTCPUA's attorneys to counsel for TCMUD 12 used the term "methodology" 11 times.²¹⁰ A plain reading of that letter reveals that counsel for the WTCPUA was using the term "rate methodology" in a broad manner to refer to the entire cost of service process. The letter indicates that the WTCPUA "adopted the wholesale customer committee recommended rate

²⁰⁹ TCMUD 12's Initial Brief at 50-53.

²¹⁰ TCMUD 12's Initial Brief at 52, fn. 227.

methodology on November 21, 2013.”²¹¹ Counsel for the WTCPUA was referring to the totality of the rate-setting process, and specifically the allocation to customers, not just one aspect of it.

Similarly, the WTCPUA used the term “wholesale rate methodology” in the resolution approving the form contract amendment.²¹² The “rate methodology” that the WTCPUA and its representatives were referring to throughout the process was the cost of service or cost allocation process. The formulas approved by the Wholesale Customer Committee and referenced in the form contract amendment all address the way in which the WTCPUA’s revenue requirement was to be allocated among its customers. Regardless of the argument that a rate methodology was used in adopting the resolution, there was no indication that this implied a change in methodology. Rather, as the amendment shows, the resolution adopts a revised cost allocation of a revenue requirement based on the same cash basis as the Prior Rates.

Additionally, although TCMUD 12 witness Zarnikau is not a ratemaking expert and has no experience in water rate matters, TCMUD 12 relies on Zarnikau’s opinion that a change in “methodology” occurred under 16 TAC § 24.133(a)(3)(C) merely based on the fact that the term “methodology” was used to describe the rates by the WTCPUA’s rate consultant.²¹³ In reality, Heddin’s discussion of “methodology” was cited out of context and dealt with the allocations of the costs that went into the different components of the rate structure, which did not change. Like Joyce, Zarnikau is confusing allocating costs with a “rate methodology” that simply determines the rate structure. While individuals may be casual in their use of words on a day-to-day basis, outside of a courtroom, parties in a contested case hearing on the public interest test must look “behind the curtain” to understand what such individuals truly meant.

²¹¹ Rebuttal Testimony of Jay Joyce, TCMUD 12 Ex. 5 at 88 (JJJ Exhibit R10).

²¹² Direct Testimony of Donald G. Rauschuber, P.E., WTCPUA Ex. 1 at 209 (Attachment Q).

²¹³ TCMUD 12’s Initial Brief at 51.

TCMUD 12 also argues that the proposed contract amendment indicated a change in methodology, claiming that the amendment changed the method for computing rates.²¹⁴ In reality, the purpose of the proposed contract amendment was to give the wholesale customers the opportunity to revise their quantity of wholesale water treatment capacity and living unit equivalent uptake schedule, which are the “capacity changes” referred to in the resolution.²¹⁵ Any formulas and explanations relating to rates involve the allocation of costs, and not a methodology. The “wholesale rate methodology” in the resolution refers to the various formulas being incorporated into the contract amendment to illustrate the allocations that the WTCPUA and the wholesale customers agreed to at the Wholesale Customer Committee meeting on April 9, 2013.²¹⁶

TCMUD 12 touts the fact that Joyce was the only witness in the case that addressed the alleged “new formulas and the nuances of the methods” used by the WTCPUA to set rates.²¹⁷ This fact is unsurprising. The reason Joyce was the only witness to address these alleged changes is because the other parties in the case know that such changes are related to cost allocation and, thus the cost of service, making it wholly irrelevant in this proceeding. Staff witness Graham testified that she did not look at the various methodologies for allocating costs.²¹⁸ Similarly, WTCPUA witness Stowe explained that it is “abundantly clear that any allocation amongst service functions and/or customer classes are within the cost of service process.”²¹⁹

²¹⁴ TCMUD 12’s Initial Brief at 52-53.

²¹⁵ Direct Testimony of Donald G. Rauschuber, P.E., WTCPUA Ex. 1 at 25; Tr. at 90:1-6 (DiQuinzio Cross) (Apr. 21, 2015).

²¹⁶ Direct Testimony of Donald G. Rauschuber, P.E., WTCPUA Ex. 1 at 25.

²¹⁷ TCMUD 12’s Initial Brief at 50.

²¹⁸ Tr. at 400:12-14 (Graham Cross) (Apr. 22, 2015).

²¹⁹ Direct Testimony of Jack E. Stowe, WTCPUA Ex. 3 at 26:11-13.

3. The allocation of costs to the variable rate and monthly charge were not a change in rate methodology.

TCMUD 12 argues that the change from a uniform rate being imposed on all wholesale water customers to an individualized volumetric rate being charged to all wholesale customers was a change in rate methodology.²²⁰ The WTCPUA does not dispute that the cost to serve each customer was examined in the cost of service study and allocated to customers based on their peak usage rather than charging each customer the same volumetric rate. However, the rate methodology (*i.e.*, rate structure) did not change because the variable rates remained uniform, rather than changing to another rate methodology, such as an inclining block rate (like in *Corsicana*). The only changes that were associated with the Protested Rates dealt with the allocation of costs to customers. In fact, the WTCPUA adjusted the allocations of costs to be more equitable to each customer by allocating costs based on each customer's use of capacity rather than imposing a uniform rate on customers with different peak demands.²²¹ As the WTCPUA's rate analyst explained, the allocation changes alleviated cross subsidization and requires growth to pay for itself rather than socializing those costs.²²²

Even if the unique volume charges were to be considered a "change in rate methodology," TCMUD 12 has not provided any evidence explaining how the Protested Rates, in making such allocations, are abusive. The volume rates contained in the Protested Rates are based on the operations and maintenance expenses associated with each customer, which are allocated based on maximum-day reservation for each customer.²²³ This allocation aligns the WTCPUA's costs with how those costs are being incurred. It encourages customers to manage their peaking to prevent the WTCPUA from being forced to further build out the system to serve

²²⁰ TCMUD 12's Initial Brief at 48-49.

²²¹ Direct Testimony of Jack E. Stowe, WTCPUA Ex. 3 at 156 (Attachment E).

²²² Rebuttal Testimony of Jay Joyce, TCMUD 12 Ex. 5 at 76 (JJJ Exhibit R9 at 9-10).

²²³ *Id.*

that peak demand, as required under WTCPUA's wholesale contracts, including the 2009 Agreement. TCMUD 12 provided no evidence that the use of maximum day reservation was abusive. In fact, for TCMUD 12, this allocation *reduced* its volume rate from \$2.77 per 1,000 gallons to \$2.11 per 1,000 gallons.²²⁴ Because the allocation is based on how costs are incurred and actually decreased under the Protested Rates, TCMUD 12 has failed to show any abuse.

Similarly, TCMUD 12 fails to show that the alleged change in allocations to set the Monthly Charge is abusive. TCMUD 12 merely references the eight-step process used to allocate costs for the protested Monthly Charge.²²⁵ However, the rates resulting from this allocation process produced a decrease in the monthly charge for TCMUD 12.²²⁶ Joyce conceded at the hearing that the percentage allocations to TCMUD 12 for the accounts cited in his testimony all went down, not up.²²⁷ Therefore, even if this change in allocation were considered to be a change in rate methodology, TCMUD 12 has failed to show, or even claim, any abuse.

TCMUD 12 also argues that the water loss formula changed between the Initial Rates and the Protested Rates. However, water losses were included in both the Initial Rates and the Protested Rates.²²⁸ Again, even if the method for the allocation of those water losses could be considered to be a change in methodology, TCMUD 12 has not provided any evidence that the change in water loss allocations evidenced an abuse of alleged monopoly power.

²²⁴ Direct Testimony of Donald G. Rauschuber, P.E., WTCPUA Ex. 1 at 27:14-15.

²²⁵ TCMUD 12's Initial Brief at 49-50.

²²⁶ Direct Testimony of Donald G. Rauschuber, P.E., WTCPUA Ex. 1 at 27:14.

²²⁷ Tr. at 146:21-148:8 (Joyce Cross) (Apr. 21, 2015).

²²⁸ Direct Testimony of Jay Joyce, TCMUD Ex. 2 at 41 (Exhibit JJJ-5 at 5).

C. Conclusion: If there was a change in the methodology for the computation of the revenue requirement or rate, the Protested Rate does not evidence WTCPUA's abuse of monopoly power.

Other than TCMUD 12, every party in this proceeding agrees that even if there was a change in the methodology for the computation of the revenue requirement or rate, the protested rate does not evidence an abuse of monopoly power.²²⁹ TCMUD 12 makes two assertions as to a possible abuse of monopoly power: TCMUD 12's rates will increase in the future, and the WTCPUA has improperly applied the proposed contract amendment allocations on customers that did not amend their contracts.²³⁰

1. Future rates are not relevant to this proceeding.

Despite the fact that the Protested Rates were actually lower than the Prior Rates, part of TCMUD 12's argument for an abuse of monopoly power relies on TCMUD 12's assertion that the rates will go up in the future.²³¹ Joyce even conceded at the hearing that the future rates were the reason that TCMUD 12 protested the rate change.²³² However, the future rates were determined to be irrelevant to this proceeding in SOAH Order Nos. 6 and 16. Rates that might be charged by the WTCPUA in the future are not relevant to the determination of whether the Protested Rates actually set by the WTCPUA on November 21, 2013, and subject to the protest, are adverse to the public interest under 16 TAC § 24.133(a)(3)(A) or (C).

Even if the future rates were determined to be relevant, TCMUD 12's argument of increasing future rates is disingenuous. TCMUD 12's current rates are based on the number of connections it currently has. As more connections are added, the amount paid by TCMUD 12

²²⁹ Staff's Initial Brief at 18; WTCMUD No. 5's Initial Brief at 11; Closing Argument of the City of Bee Cave's at 9 (June 26, 2015) (Bee Cave's Initial Brief); Initial Brief of Hays County, a Political Subdivision of the State of Texas at 15 (June 26, 2015) (Hays County's Initial Brief).

²³⁰ TCMUD 12's Initial Brief at 62-65.

²³¹ TCMUD 12's Initial Brief at 62-63.

²³² Tr. at 178:23-25 (Joyce Cross) (Apr. 21, 2015).

will necessarily be higher as more is required of the WTCPUA to serve TCMUD 12's growing system. TCMUD 12's concern with amending its contract was due to the potential increased consumption in the future that may or may not exceed the maximum reserve capacity.²³³ Furthermore, TCMUD 12's assertion is based on the assumption that the cost to serve WTCPUA's customers will not change in the future. It ignores the possibility of WTCPUA experiencing a lowering of expenses or increased economies of scale that could impact rates in the future.

2. The optional, voluntary contract amendment offered to WTCPUA's wholesale customers has no bearing on the Protested Rates.

TCMUD 12 dedicates a significant portion of its brief to recklessly arguing that the WTCPUA somehow abused its monopoly power by inappropriately applying the terms of the proposed contract amendment to the 2009 Agreement (proposed in 2013), to TCMUD 12.²³⁴ Such claim is meritless and illusory. TCMUD 12's argument is fundamentally flawed because it fails to realize that the contract amendments, for the most part, occurred after the WTCPUA adopted the Protested Rates. More importantly, like the Prior Rates, the Protested Rates were adopted by the Board of Directors, to be applied in accordance with the provisions of those Orders.²³⁵

In any event, the WTCPUA has the right under the 2009 Agreement to allocate costs as long as the allocations are consistent with the methodology of that Agreement, *i.e.*, designed to recover no more than the Costs of the LCRA System. As the Preamble to 16 TAC § 24.133 notes, sufficient deference must be given to contractual agreements between the seller and purchaser.²³⁶

²³³ Tr. at 91:10-15 (DiQuinzio Cross) (Apr. 21, 2015).

²³⁴ TCMUD 12's Initial Brief at 48-65.

²³⁵ Direct Testimony of Donald G. Rauschuber, P.E., WTCPUA Ex. 1 at 235 (Attachments M and S).

²³⁶ Rebuttal Testimony of Jay Joyce, TCMUD 12 Ex. 5 at 55 (JJJ Exhibit R1 at 1).

Throughout the process of setting the Protested Rates, the WTCPUA worked with the Wholesale Customer Committee on the method by which to allocate costs. During the April 9, 2013, Committee meeting, attended by TCMUD witness Joyce,²³⁷ the WTCPUA representatives stepped out of the room for over an hour to allow the Committee to discuss in private their recommendation for allocating debt and operations and maintenances costs in the Monthly Charge.²³⁸ The Committee reached a consensus on the allocation methodology, and the Committee's recommendations formed the basis for the recommendation to the WTCPUA Board.²³⁹ These allocations were always intended to apply uniformly to all of the WTCPUA's wholesale customers and were not merely a term in the Proposed Amendment.

The WTCPUA and the wholesale customers who agreed to amend their contracts merely included the formula in the amendment contracts to illustrate how the costs would be allocated. On October 15, 2013, Mr. Rauschuber sent a letter to the wholesale customers, informing them of the rates that would be considered by the WTCPUA Board in November 2013.²⁴⁰ The rates attached to that letter were based on the allocations that TCMUD 12 is now complaining about. That letter separately informs the customers that Mr. Rauschuber would like to meet with the customers if they would like to reduce their maximum reserve capacity.²⁴¹ In fact, contract amendments could be entered into *after* the WTCPUA adopted the Protested Rates in November 2013, which adopted the allocations being challenged by TCMUD 12. Barton Creek West WSC and the WTCPUA executed a contract amendment in March 2014, long after the Protested Rates (with the new allocation formula) were adopted (and implemented).²⁴² Therefore, in accordance

²³⁷ Direct Testimony of Donald G. Rauschuber, P.E., WTCPUA Ex. 1 at 235 (Attachment U).

²³⁸ Direct Testimony of Donald G. Rauschuber, P.E., WTCPUA Ex. 1 at 24:9-20.

²³⁹ Direct Testimony of Donald G. Rauschuber, P.E., WTCPUA Ex. 1 at 24:15-17.

²⁴⁰ Direct Testimony of Jay Joyce, TCMUD Ex. 2 at 54A (Exhibit JJJ-11 at 49).

²⁴¹ *Id.*

²⁴² See TCMUD 12 Ex. 20.

with the November 21, 2013 rate order, the allocation formulas were already part of the Protested Rates for all wholesale customers before those entities agreed to contract amendments, and the formulas could not have been part of the bargain struck between the WTCPUA and those entities.

The evidence demonstrates that the WTCPUA's intent of working with its wholesale customers to further amend their contracts was to give the wholesale customers the opportunity to revise their quantity of wholesale water treatment capacity and living unit equivalent uptake schedule.²⁴³ Specifically, Rauschuber explained that the purpose of allowing these amendments was to enable customers to reduce or increase their individual impact on the system and more accurately reflect the amount of water treatment capacity.²⁴⁴ Six of WTCPUA's customers chose to amend their contracts. However, TCMUD 12 did not choose to change their maximum reserve capacity, citing the fact that TCMUD 12 is a young district that did not want to give up capacity when it is still working toward full build out.²⁴⁵ Fatal to TCMUD 12's argument, Joyce conceded that he did not think that there was a direct correlation between reducing the maximum amount and a reduction in the rate.²⁴⁶

Furthermore, TCMUD 12's claims of abuse are a mirage because both the Prior Rates and the Protested Rates are set pursuant to the 2009 Agreement, which requires that the rates be set based on the "Costs of the LCRA System."²⁴⁷ TCMUD 12 even acknowledges this point in its Initial Brief, stating that the "*methodology for calculating each of the three rates is set out in the Wholesale Water Services Agreement as are the provisions related to changing these*

²⁴³ Direct Testimony of Donald G. Rauschuber, P.E., WTCPUA Ex. 1 at 25:6-9; Tr. at 90:1-6 (DiQuinzio Cross) (Apr. 21, 2015).

²⁴⁴ Direct Testimony of Donald G. Rauschuber, P.E., WTCPUA Ex. 1 at 25:9-12.

²⁴⁵ Tr. at 90:1-91:15 (Apr. 21, 2015).

²⁴⁶ *Id.*

²⁴⁷ Direct Testimony of Donald G. Rauschuber, P.E., WTCPUA Ex. 1 at 77 (Attachment G at 11).

rates.”²⁴⁸ “Costs of the LCRA System” is a defined term in the 2009 Agreement, which provides that the Monthly Charge is intended to recover the capital-related Costs of the LCRA System not recovered in the Connection Fee.²⁴⁹ The Volume Rate is intended to recover the operation and maintenance related Costs of the LCRA System, as well as costs not recovered through the Connection Fee or Monthly Charge.²⁵⁰ Despite TCMUD 12’s claims that the computation of the Monthly Charge and Volume Rate have changed, these charges and rates were computed based on the Costs of the LCRA System for both the Initial Rates and the Protested Rates. There is no evidence in the record indicating otherwise. The allocations are consistent with the terms of both the contracts that have been amended and those that were not amended. TCMUD 12 also ignores that many wholesale providers apply a customer’s pro-rata share of the capital costs based on its maximum-day reservation. Therefore, contrary to TCMUD 12’s allegation, the WTCPUA is not inappropriately applying terms from the proposed contract amendment to TCMUD 12. The cost allocation terms were a product of the Wholesale Customer Committee meetings and were additionally agreed to by several wholesale customers after the WTCPUA’s adoption of the Protested Rates.

Even if there was determined to be a change in methodology, TCMUD 12 has provided no evidence of any abuse that resulted from that change. The WTCPUA worked with its wholesale customers to develop the allocations and incorporated those allocations into the Protested Rates. For those six wholesale customers who decided to revise their agreements in 2013 and 2014, they also agreed to memorialize those allocations into those agreements; again, with nearly all of the amendments occurring months after the Protested Rates were approved. Furthermore, the allocations applied by WTCPUA alleviate cross subsidization that could have

²⁴⁸ TCMUD 12’s Initial Brief at 30.

²⁴⁹ Direct Testimony of Donald G. Rauschuber, P.E., WTCPUA Ex. 1 at 68 and 75-77 (Attachment G).

²⁵⁰ *Id.*

occurred and more closely tied the rates paid to the costs being incurred. TCMUD 12's only claim of harm was the possibility of the rates increasing in the future; however, future rates are irrelevant to this proceeding. TCMUD 12's appeal must be denied.

V. TRANSCRIPTION COSTS

Despite TCMUD 12's assertions that the Texas Commission on Environmental Quality rule should continue to apply, as stated in its Initial Brief, WTCPUA believes the costs of the transcript should be borne by each party requesting a copy of the transcript pursuant to the Commission Procedural Rule, 16 TAC § 22.204(b).

VI. CONCLUSION AND PRAYER

WTCPUA reasserts the conclusion in its Initial Brief that TCMUD 12 has wholly failed to carry its burden of proof that the Protested Rates are adverse to the public interest under 16 TAC § 24.133(a)(3)(A) or (C). The Protested Rates, adopted by the Board of Directors of WTCPUA on November 21, 2013, are consistent with the terms and methodologies established under the 2009 Agreement. The 2009 Agreement was extensively negotiated by TCMUD 12 when it selected the LCRA, which had available, existing capacity in its water treatment plant, as the sole-source provider of wholesale water treatment services to TCMUD 12 and 13, and a portion of TCMUD 11. TCMUD 12 did not submit requests for wholesale water treatment services to any other entity, not even to Lakeway MUD, a water district that is adjacent to TCMUD 11 and treating raw water for the other portion of TCMUD 11. Additionally, prior to filing its petition, TCMUD 12 also never conducted an assessment of costs to construct its own water treatment facilities, despite: (1) being located on Lake Travis, where it can divert its raw water supply; (2) being a water district, authorized by law to construct and operate such facilities; and (3) entering into a contract with a developer who has agreed to advance the costs of designing and constructing water infrastructure.

In any event, a few years later, after further negotiations between TCMUD 12, LCRA, and the WTCPUA, those parties agreed to enter into the 2012 Amendment, wherein TCMUD 12 successfully negotiated additional benefits, through its attorney, in consideration for providing its consent for LCRA to assign all of its rights and obligations under the 2009 Agreement to the WTCPUA.

As discussed in great detail in the WTCPUA's Initial Brief and this Response Brief, the 2009 Agreement and the 2012 Amendment demonstrate that the WTCPUA (and LCRA before it) did not, and does not, have a monopoly over the provision on wholesale water treatment services to TCMUD 12, and that WTCPUA does not have disparate bargaining power over TCMUD 12. Rather, TCMUD 12 has disparate bargaining power over WTCPUA because: (1) TCMUD 12 had alternative wholesale water treatment service providers available; (2) the LCRA/WTCPUA needed a customer in 2009; and (3) the 2009 Agreement significantly restricted the ability of WTCPUA to change the rates, required the WTCPUA to have capacity available to provide wholesale water treatment services available to TCMUD 12, as needed, and provided to TCMUD 12 a guaranteed right to capacity in the System.

Further, the WTCPUA's decisions to create a Wholesale Customer Committee, hold six Committee meetings in 2013 to gain input from its customers, and incorporate those suggestions in the Protested Rates, also do not demonstrate an abuse of alleged monopoly power. The additional benefit offered to TCMUD 12 reflected in the WTCPUA's decision to let its wholesale customers consider amending their reserved capacities and build-out schedules under their contracts in 2013-2014 is not evidence of an abuse of alleged monopoly power.

As to the Protested Rates, TCMUD 12's claims, in light of the AWWA M1 Manual and applicable Commission rules, focus solely on irrelevant cost allocation issues, not the revenue requirement or rate methodology. Clearly, it is TCMUD 12's goal to erase the bright line

established in 16 TAC § 24.133(b) and in precedent that the public interest determination may *not* be based upon an analysis of the seller's cost of service.

In any event, the computation of the revenue requirement and rate used for the Prior Rates did not change with the Protested Rates. Furthermore, the Protested Rates, which *are lower than any rate TCMUD 12 has ever paid for wholesale water treatment services (even when TCMUD 12 did not have any customers)*, do not demonstrate an abuse of alleged monopoly power. As noted in the WTCPUA's Initial Brief, that fact alone should be sufficient grounds to dismiss TCMUD 12's Petition, and to find that the Protested Rates are not adverse to the public interest.

WHEREFORE, PREMISES CONSIDERED, West Travis County Public Utility Agency respectfully requests that the Commission find that the Protested Rates are not adverse to the public interest, that the Petition of TCMUD 12 be dismissed, and that it be granted such other and further relief to which it may be entitled.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE
& TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900

Austin, Texas 78701

Telephone: (512) 322-5800

Facsimile: (512) 472-0532



DAVID J. KLEIN

State Bar No. 24041257

dklein@lglawfirm.com

GEORGIA N. CRUMP

State Bar No. 05185500

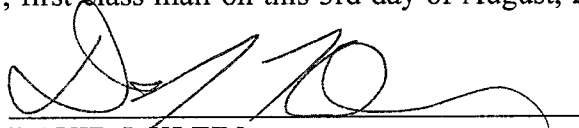
gcrump@lglawfirm.com

MELISSA LONG
State Bar No. 24063949
mlong@lglawfirm.com

ATTORNEYS FOR WEST TRAVIS COUNTY
PUBLIC UTILITY AGENCY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by e-mail, fax, hand-delivery and/or regular, first class mail on this 3rd day of August, 2015, to the parties of record.



DAVID J. KLEIN

**SOAH DOCKET NO. 473-14-5144.WS
PUC DOCKET NO. 42866**

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

I. FINDINGS OF FACT

History of West Travis County Public Utility Agency

1. The West Travis County Public Utility Agency ("WTCPUA") was created by the adoption of a concurrent ordinance by the City of Bee Cave, Texas ("City"), West Travis County Municipal Utility District No. 5 ("WTMUD 5"), and Hays County.
2. The WTCPUA is a Texas public utility agency, a political subdivision of the state of Texas organized under Chapter 572 of the Texas Local Government Code, and is governed by a five member Board of Directors. The City Council of the City appoints two members, WTCMUD 5's Board of Directors appoints one member, and the Hays County Commissioners Court appoints two members.
3. On October 22, 2009, Travis County Municipal Utility District No. 12 ("TCMUD 12") entered into a Wholesale Water Services Agreement with the Lower Colorado River Authority ("LCRA") (the "2009 Agreement") for a term of forty (40) years, where LCRA agreed in part to divert TCMUD 12's raw water supply, treat such raw water, and deliver such treated water to TCMUD 12 ("wholesale water treatment services") at a certain delivery point, in an amount up to 3.98 million gallons per day ("mgd").
4. Per Sections 4.01.d and 4.01.e of the 2009 Agreement, WTCPUA invoiced TCMUD 12 monthly, charging TCMUD 12 a fixed monthly amount, called the Monthly Charge, and a Volumetric Rate, which was a flat volume rate per 1,000 gallons of wholesale water treatment services provided.
5. During the years subsequent to 2009, the LCRA determined to divest itself of the West Travis County Regional Wholesale Water and Wastewater System ("System").

6. The LCRA and WTCPUA entered into the Utilities Installment Purchase Agreement (“UIPA”) on January 17, 2012. The UIPA provides that the WTCPUA and LCRA would work together to convey ownership of the System to WTCPUA and to assign over 250 agreements from LCRA to WTCPUA that pertained to the provision of ongoing and future wholesale and retail water and wastewater services from the West Travis County Regional Water and Wastewater System (the “System”).
7. The WTCPUA, City, Hays County, and WTCMUD 5 entered into the “Acquisition, Water Supply, Wastewater Treatment and Conditional Purchase Agreement” with an effective date of March 19, 2012 (the “Participant Agreement”), which governs the relationships between the WTCPUA and its creators, known as the “Participants.”
8. The UIPA provided that WTCPUA would take over operations of the System on March 19, 2012, and WTCPUA did take over operations of the System on that date.
9. The Agreement Regarding Transfer of Operations of the West Travis County Water System from the LCRA, to the WTCPUA (“2012 Amendment”) was fully executed by LCRA, WTCPUA, and TCMUD 12 on July 12, 2012, but was effective on March 19, 2012, amending the 2009 Agreement and assigning all of LCRA’s rights and obligations under the 2009 Agreement to WTCPUA.
10. The 2009 Agreement, as amended, is not an all-requirements contract. Such Agreement does not require TCMUD 12 to obtain all of its wholesale water treatment services exclusively from WTCPUA. Rather, the WTCPUA is obligated to provide wholesale water treatment services to TCMUD 12, up to certain levels, to the extent requested by TCMUD 12.
11. The WTCPUA has 13 wholesale water service and wholesale water treatment service customers.

Rate History

12. Immediately upon acquisition of the System, the Board of Directors of the WTCPUA adopted the rates that were then currently in effect for the LCRA System, effective on March 19, 2012. These rates were rates charged by WTCPUA to TCMUD 12 for wholesale water treatment services.
13. The initial Monthly Charge, effective on March 19, 2012, for TCMUD 12 was \$9,430.00 per month and the flat Volume Rate was \$2.40 per 1,000 gallons.
14. On November 15, 2012, the WTCPUA adopted new rates for the wholesale water treatment services that it provided to its wholesale customers, effective on January 1, 2013 (“Prior Rates”).
15. The Prior Rates increased TCMUD 12’s Monthly Charge from \$9,430.00 to \$10,891.65, and Volume Rate from \$2.40 to \$2.77 per 1,000 gallons.

16. On November 21, 2013, the WTCPUA adopted new rates for the wholesale water treatment services that it provides to its wholesale customers, effective on January 1, 2014 (the “Protested Rates”).
17. Each of WTCPUA’s wholesale customers received notice of the new rates on December 17, 2013.
18. Under the Protested Rates, TCMUD 12’s Monthly Charge decreased from \$10,891.65 to \$8,140.89 and the flat Volume Rate decreased from \$2.77 per 1,000 gallons to \$2.11 per 1,000 gallons.

Jurisdiction

19. On March 6, 2014, TCMUD 12 filed the Original Petition in this case with the Texas Commission on Environmental Quality (“TCEQ”) pursuant to Texas Water Code §§ 11.036, 11.041, 12.013, and 13.043(f), and Tex. Local Gov’t Code § 572.061(d), and served it on WTCPUA.
20. On May 9, 2014, the TCEQ’s Chief Clerk mailed notice of the first preliminary hearing to the attorneys of record for WTCPUA, the City, Hays County, WTCMUD 5, TCMUD 12, the TCEQ’s Executive Director, and the Office of Public Interest Counsel (“OPIC”).
21. 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.
22. On June 11, 2014, the Administrative Law Judge convened the first preliminary hearing as indicated in the notice.
23. Attorneys of record for WTCPUA, TCMUD 12, the City, WTCMUD 5, the TCEQ’s Executive Director, and OPIC appeared at the preliminary hearing.¹
24. On September 1, 2014, this case was transferred from the subject matter jurisdiction of the TCEQ to the Public Utility Commission of Texas (“Commission”).
25. Attorneys of record for the WTCPUA, TCMUD 12, the City, Hays County, WTCMUD 5, and the Commission appeared at the hearing on the merits.²

¹ Hays County did not appear at the first preliminary hearing, but was admitted as a party, *see* ALJ Order No. 1

² The Administrative Law Judge approved the TCEQ Executive Director’s motion to withdraw as a party to this case on September 17, 2014, *see* ALJ Order No. 4; OPIC did not appear or participate at the hearing on the merits.

26. On September 12, 2014, TCMUD 12 filed a motion to amend its jurisdictional claim by withdrawing its claim that the Commission had jurisdiction under Texas Water Code §§ 11.036 and 11.041.
27. The Commission has jurisdiction under Texas Water Code § 13.043(f).
28. The Protested Rates were set pursuant to the 2009 Agreement, a written contract, and, therefore, in accordance with 16 Tex. Admin. Code ("TAC") § 24.131(b), the evidentiary hearing on public interest was conducted.

Parties

29. The following were parties in the public interest proceeding:

PARTY	REPRESENTATIVE
WTCPUA	David Klein, Georgia Crump, and Melissa Long
TCMUD 12	Kay Trostle and Miguel Huerta
City of Bee Cave	Jim Haley
Hays County	Mark Kennedy
WTCMUD 5	Randall Wilburn
Commission Staff	Jessica Gray and Sam Chang

Schedule

30. The major procedural events in this case:

DATE	EVENT
June 11, 2014	First Preliminary hearing
July 14, 2014	Discovery begins
August 15, 2014	Deadline for requests for disclosure
September 11, 2014	Prehearing conference to consider adjustments necessary due to transfer of jurisdiction from the Commission the PUC
October 31, 2014	Deadline for TCMUD 12 to prefile its direct case in writing, including all testimony and exhibits

December 19, 2014	Deadline for parties other than TCMUD 12 and the Executive Director to prefile their direct cases in writing, including all testimony and exhibits
February 6, 2015	Deadline for Commission Staff to prefile its direct cases in writing, including all testimony and exhibits
March 6, 2015	Discovery to District 12 on direct case ends; deadline to file motions for summary disposition
March 17, 2015	Deadline to file objections to and motions to strike any prefiled direct-case evidence
March 18, 2015	Deadline to file responses to motions for summary disposition
March 20, 2015	Discovery ends for non-rebuttal discovery
March 24, 2015	Deadline for TCMUD 12 to file rebuttal evidence
March 31, 2015	Deadline to propound discovery concerning TCMUD 12's rebuttal.
March 31, 2015	Deadline to file responses to objections and motions to strike direct-case prefiled evidence
April 8, 2015	Deadlines for Parties' objections to prefiled rebuttal testimony of TCMUD 12
April 10, 2015	Deadline to conduct depositions
April 15, 2015	Deadline for TCMUD 12's responses to objections to rebuttal testimony
April 21, 2015	Hearing on the merits of case begins
April 23, 2015	End of hearing on the merits
June 26, 2015	Deadline for filing initial closing arguments
August 3, 2015	Deadline for filing replies to closing arguments
_____, 2015	Proposal for Decision issued

Public Interest Considerations Not Applicable In This Case

31. On March 6, 2015, WTCPUA filed a Motion for Partial Summary Decision, requesting a summary decision on the public interest criteria not addressed by TCMUD 12. Commission Staff responded to the Motion on March 18, 2015, supporting the Motion. TCMUD 12 also responded to the Motion on March 18, 2015, agreeing in part with the Motion, and opposing in part.
32. On March 24, 2015, the Administrative Law Judge granted in part, and denied in part, of the Motion for Partial Summary Decision. The Administrative Law Judge ruled that the

public interest criteria set forth in 16 TAC §24. 133(a)(1), (2), (3)(B) and (D)-(H), and (4) are not subject to the dispute and concluded that the protested rates do not adversely affect the public interest when judged by them.

33. The only remaining public interest considerations to be determined in this case are those described in 16 TAC § 24.133(a)(3)(A) and (C).

Monopoly Status of WTCPUA

34. The WTCPUA is not a monopoly. The WTCPUA is a sole-source provider of wholesale water treatment services to TCMUD 12 pursuant to the 2009 Agreement, as amended by the 2012 Amendment.
35. The historical background of the 2009 Agreement establishes that the WTCPUA is not a monopolist.
36. TCMUD 12 was not obligated under any other agreement or contract to enter into the 2009 Agreement with LCRA signed by TCMUD 12 on 10/20/09, by Rough Hollow Development on 10/22/09 and by LCRA on 10/19/09.
37. TCMUD 12 chose the LCRA as its sole-source supplier of wholesale water treatment services in 2009.
38. TCMUD 12 failed to consider other available options before contracting with the LCRA.
39. In 2009, TCMUD 12 had extensive negotiations with the LCRA prior to entering into the 2009 Agreement.
40. The WTCPUA stepped into the shoes of LCRA in 2012 when the WTCPUA purchased the System and the 2009 Agreement was assigned to the WTCPUA, by agreement of TCMUD 12.
41. Monopoly market characteristics show that neither the LCRA nor the WTCPUA are monopolists.
42. The LCRA was not the only option for the provision of wholesale water treatment services to TCMUD 12; it was not a single-seller.
43. There were other alternatives available to TCMUD 12 in 2009, but TCMUD 12 failed to prove that it undertook reasonable efforts to identify other providers or to request service from other providers.
44. TCMUD 12 provided no evidence regarding the costs that would have been involved in obtaining services from other providers, or from participating in the WTCPUA.

45. Neither the LCRA nor the WTCPUA was a price maker with complete control over prices and quantities.
46. The 2009 Agreement places limitations on WTCPUA's ability to change rates charged thereunder. The rates must be based on the WTCPUA's costs, known as the "Costs of the LCRA System," they must be non-discriminatory and just and reasonable, and they cannot be unilaterally changed.
47. When TCMUD 12 agreed to the assignment of the 2009 Agreement in 2012 from LCRA to WTCPUA, TCMUD 12 negotiated provisions favorable to it.
48. The WTCPUA created a Wholesale Customer Committee to obtain input from the WTCPUA's wholesale customers in developing future wholesale water treatment service rates, and to have an open and full dialogue between WTCPUA and its wholesale customers.
49. TCMUD 12 was a member of this Committee, and its appointed representative was Joe DiQuinzio, its General Manager.
50. The WTCPUA Wholesale Customer Committee met 6 times: on January 28, 2013; March 25, 2013; April 1, 2013; April 9, 2013; May 6, 2013; and May 14, 2013.
51. While Joe DiQuinzio did not attend any of the six Wholesale Customer Committee meetings; a representative of TCMUD 12 did attend 4 of the meetings.
52. In addition to the Wholesale Customer Committee meetings, WTCPUA also met with representatives of TCMUD 12 on January 13, 2013, April 30, 2013, and November 8, 2013.
53. The WTCPUA received feedback from Wholesale Customer Committee members regarding the allocations of costs for the WTCPUA's upcoming rate change.
54. On April 9, 2013, the Wholesale Customer Committee reached a consensus on recommendations for allocating debt and operations and maintenance costs in the Monthly Charge; and the revised rates (the Protested Rates) subsequently adopted by the WTCPUA Board were based upon these recommendations.
55. The WTCPUA provided its wholesale treated water service customers with the opportunity in 2013 and 2014 to revise their amount of reserved wholesale water treatment capacity and living unit equivalent uptake schedules to enable them to reduce (or increase) their individual impact of the System and to more accurately reflect the amount of wholesale water treatment capacity needed from WTCPUA over time.
56. The WTCPUA's Wholesale Water Treatment Service customers, including TCMUD 12, were not required to amend their contracts in 2013 and 2014.

57. TCMUD 12 declined to revise its 2009 Agreement, but six of the other 13 customers did amend their agreements in 2013 and 2014, after the effective date of the Protested Rates.
58. There is no evidence of insurmountable barriers to entry in the market of wholesale water treatment services in TCMUD 12's service area.
59. No legal barriers exist to prevent alternate providers of wholesale treated water services to TCMUD 12.
60. No physical barriers exist to prevent alternate providers of wholesale treated water services to TCMUD 12. TCMUD 12's water distribution system is physically connected to the water distribution system for the Rough Hollow Subdivision, which receives wholesale treated water services from Lakeway Municipal Utility District ("Lakeway MUD"). But for opening a valve between these two distribution systems, these systems would be hydrologically connected.
61. TCMUD 12 provided no evidence of barriers to entry because of economies of scale.
62. High cost of entry may exist in markets that do not have monopolies.
63. There was no evidence to show that building a new system by TCMUD 12 would have been prohibitively expensive. The only evidence regarding the cost of a new system was prepared by TCMUD 12 two days prior to filing its testimony, so it cannot relate to the relevant time periods of TCMUD 12's appeal.

Disparate Bargaining Power of the Parties

64. TCMUD 12 had substantial bargaining power in its negotiations of the 2009 Agreement with the LCRA in 2009.
65. TCMUD 12 was represented by counsel and engaged in extensive negotiations with the LCRA, prior to entering into the 2009 Agreement with the LCRA.
66. TCMUD 12 weighed at least one other option before entering into the 2009 Agreement with the LCRA.
67. The LCRA did not have disparate bargaining power over TCMUD 12.
68. LCRA had available capacity to treat TCMUD 12's raw water supply at the time that LCRA and TCMUD 12 entered into the 2009 Agreement.
69. The WTCPUA stepped into the shoes of the LCRA in 2012 when the WTCPUA purchased the System from the LCRA.
70. TCMUD 12 had substantial bargaining power in 2012 when TCMUD 12 agreed to the assignment of the LCRA agreement to WTCPUA.

71. The WTCPUA did not have disparate bargaining power over TCMUD 12 in 2012.

TCMUD 12's Alternative Means of Obtaining Water Treatment Services

72. On September 25, 2008, LCRA and TCMUD 12 entered into a Firm Water Contract ("Raw Water Contract"), whereby TCMUD 12 secured the right to divert 1,680 acre-feet of raw or untreated water per year from LCRA for use within the boundaries of TCMUD 11, 12, and 13. Such water can be diverted on Lake Austin and Lake Travis.
73. The Raw Water Contract does not specify or restrict who can divert, treat, and transport such raw water supply.
74. Under an Agreement for Wholesale Water and Wastewater Service between Lakeway MUD and TCMUD 11, Lakeway MUD diverts up to 362,500 gallons per day of the water secured under the Raw Water Contract from Lake Travis, treats such water, and delivers such treated water to TCMUD 11 for use within the Rough Hollow Subdivision.
75. Under the 2009 Agreement, as amended, TCMUD 12 is entitled to receive up to 2,125 living unit equivalents, or 3.98 mgd, of wholesale water treatment services from WTCPUA, where WTCPUA diverts water secured under the Raw Water Contract from Lake Austin, treats such water, and delivers such treated water to TCMUD 12 for use within The Highlands Subdivision, located within TCMUD 11, TCMUD 12, and TCMUD 13.
76. TCMUD entered into negotiations with LCRA for wholesale water treatment services in part because LCRA's System had capacity to treat the water needed to serve The Highlands.
77. TCMUD 12 did not adequately investigate its alternative means of obtaining wholesale water treatment services in 2009 when it entered into the 2009 Agreement with the LCRA.
78. Although providers of wholesale water treatment services may have been available in 2009, TCMUD 12 did not request such services from any provider other than LCRA.
79. TCMUD 12, its directors, officers, employees, or other representatives, have not delivered or sent correspondence or documents to an entity other than the WTCPUA and LCRA in the past 10 years regarding the purchase of a wholesale treated water supply for TCMUD 12.
80. Between January 1, 2009 and March 6, 2014, officials, employees, representatives, and/or contractors of TCMUD 12 did not engage in discussions or meetings with officials, employees, representatives, or contractors of other water providers, other than LCRA or the WTCPUA, for a supply of treated water.

81. Between January 1, 2009 and March 6, 2014, officials, employees, representatives, and/or contractors of TCMUD 12 did not engage in discussions or meetings with officials, employees, representatives, or contractors of other water providers, other than LCRA or the WTCPUA, for water treatment services.
82. TCMUD 12's water distribution system to serve The Highlands Subdivision, which receives treated water from WTCPUA, is physically connected to the water distribution system for the Rough Hollow Subdivision, which is located in TCMUD 11 and receives wholesale treated water services from Lakeway MUD. But for opening a valve between these two distribution systems, these systems would be hydrologically connected.
83. TCMUD 12 has not provided WTCPUA with a written request for permission to open the interconnection between the TCMUD 12 distribution system so that Lakeway MUD could provide TCMUD 12 with a treated water supply.
84. On January 1, 2008, TCMUD 12 had 0 customers.
85. On January 1, 2009, TCMUD 12 had 0 customers.
86. On January 1, 2010, TCMUD 12 had fewer than 10 customers.
87. On January 1, 2011, TCMUD 12 had 10 customers.
88. On January 1, 2012, TCMUD 12 had 23 customers;
89. On January 1, 2013, TCMUD 12 had 48 customers;
90. On January 1, 2014, TCMUD 12 had 132 customers;
91. On November 4, 2011, Lakeway MUD, Hurst Creek Municipal Utility District ("HCMUD"), TCMUD 11, Lakeway Rough Hollow South Community, Inc., and LCRA entered into a Purchase Agreement for the Lakeway Regional Raw Water Transportation System, whereby LCRA sold the other four entities the Lakeway Regional Raw Water Transportation System.
92. The Lakeway Regional Raw Water Transportation System consists of a floating raw water barge intake, a pump control building, approximately 1.9 miles of raw water transmission pipelines and a bolted-steel ground storage tank. In particular, the barge houses four, 200 horsepower vertical turbine pumps, motors and associated piping with space to expand to add up to two additional pumps. The pump control building also houses four motor control centers for the pumps on the raw water barge intake, and it includes space to expand and include the controls for the additional two pump slots on the barge.
93. On or around May 17, 2012, Lakeway MUD, HCMUD, TCMUD 11, and Lakeway Rough Hollow South Community, Inc., entered into a Joint Ownership and Operating

Agreement for the Lakeway Regional Raw Water Transportation System, identifying the parties' percentage share of ownership in such system and obligation to maintain such system.

94. Under such Joint Ownership and Operating Agreement, the parties determined that (i) the then current total capacity of the Lakeway Regional Raw Water Transportation System was 6.812 mgd, but (ii) the capacity of the Lakeway Regional Raw Water Transportation System, by installing the two additional raw water pumps on the barge and making electrical and other upgrades and improvements to the system, could be expanded to 9.7 mgd.
95. Under such Joint Ownership and Operating Agreement, the parties agreed that the system could be expanded up to the 9.7 capacity level at any time upon approval of (i) Lakeway MUD and one of the other parties, or (ii) HCMUD, TCMUD 11, and Lakeway Rough Hollow South Community, Inc.
96. TCMUD 12 is located in western Travis County, and portions of its jurisdictional boundaries are adjacent to Lake Travis, TCMUD 11, and TCMUD 13. Lakeway MUD is adjacent to TCMUD 11.
97. TCMUD 12 is a municipal utility district, governed under Texas Water Code Chapters 49 and 54. TCMUD 12 has the authority to design, construct, and operate water diversion, treatment and transportation infrastructure. TCMUD 12, as a municipal utility district, also has the authority to issue ad valorem tax bonds and revenue bonds to pay for water utility infrastructure to divert, treat, and transport, and deliver water within its jurisdictional boundaries.
98. The voters of TCMUD 12 have authorized the issuance of up to approximately \$84.8 million in unlimited tax bonds for water and wastewater purposes.
99. The City of Austin owns and operates a water treatment plant on Lake Travis.
100. TCMUD 12's choice in 2009 to enter into the wholesale water treatment services agreement with the LCRA was not due to any abuse by the WTCPUA of disparate bargaining or monopoly power.
101. TCMUD 12 did not adequately investigate its alternative means of obtaining water treatment services in 2012 when it consented to the assignment of the 2009 Agreement to the WTCPUA.
102. Although providers of wholesale water treatment services may have been available in 2012, TCMUD 12 did not investigate the availability of such services before it agreed to the assignment of the 2009 Agreement to the WTCPUA.
103. The WTCPUA did not have, and did not attempt to exercise power over TCMUD 12 to deprive TCMUD 12 of an alternative supply of wholesale water treatment services.

104. TCMUD 12's choice in 2012 to agree to the assignment of the 2009 Agreement from the LCRA to the WTCPUA was not due to the WTCPUA's abuse of disparate bargaining or monopoly power.
105. TCMUD 12 had alternative wholesale water treatment service providers to WTCPUA in 2009 and 2013.
106. Because TCMUD 12 had alternatives, WTCPUA has not abused any monopoly power in establishing the Protested Rates.

TCMUD 12's Alternative Costs of Obtaining Wholesale Water Treatment Services

107. TCMUD 12 did not adequately investigate its costs of obtaining water treatment services from a provider other than the LCRA in 2009 when it entered into the 2009 Agreement with the LCRA.
108. TCMUD 12 did not adequately investigate its cost of obtaining water treatment services from a provider other than the WTCPUA in 2012 when it consented to the assignment of the 2009 Agreement to the WTCPUA.
109. Although providers of wholesale water treatment services may have been available in 2012, TCMUD 12 did not investigate the costs of such services before it agreed to the assignment of the 2009 Agreement to the WTCPUA.
110. Because the WTCPUA is not monopoly, it has not abused any monopoly power.

TCMUD 12's Additional Problems associated with Obtaining Wholesale Water Treatment Services from an Alternative Provider

111. TCMUD 12 did not provide any evidence of any regulatory or legal problems associated with obtaining wholesale water treatment services from a third party.
112. TCMUD 12 did not provide any evidence of regulatory or legal problems associated with constructing infrastructure to provide wholesale water treatment services itself.
113. On January 10, 2012, TCMUD 12 entered into a Utility Construction Agreement between TCMUD 12 and Rough Hollow Development, Ltd., providing in part the terms and conditions whereby Rough Hollow Development, Ltd. would provide advances to TCMUD 12 for the costs arising from the "Project," which includes water facilities. Under this Utility Construction Agreement, the parties further agreed that TCMUD 12 will issue ad valorem tax bonds until it is financially capable to do so to reimburse the developer for such advances.

114. Because there are no additional problems impacting TCMUD 12's ability to obtain wholesale water treatment services from an alternative provider, WTCPUA, has not abused any monopoly power in establishing the Protested Rates.

2009 Agreement, as Amended by the 2012 Amendment, Does Not Show Monopoly or Abuse Thereof

115. The 2009 Agreement between the LCRA and TCMUD 12 was an arms-length transaction that was negotiated over a lengthy period of time.
116. TCMUD 12, through its attorney, had significant input and influence over the substance of the 2009 Agreement with the LCRA.
117. Numerous provisions in the 2009 Agreement are to the benefit of TCMUD 12, and are not generally found in contracts imposed by monopolists.
118. The 2009 Agreement establishes the restrictions and requirements whereby WTCPUA can establish and modify the wholesale water treatment rates charged to TCMUD 12.
119. TCMUD 12 provided no evidence of complaints regarding the provisions of the 2009 Agreement.
120. When the WTCPUA requested TCMUD 12's agreement for the assignment of the 2009 Agreement to WTCPUA, TCMUD 12 negotiated additional provisions upon which its agreement was conditioned. These additional provisions benefitted TCMUD 12 and protected its contractual rights.
121. TCMUD 12 provided no evidence of complaints regarding the provisions of the 2012 Amendment.
122. The WTCPUA offered an opportunity for TCMUD 12 to revise its monthly charges by updating the amount of treatment capacity being reserved for the district.
123. Despite the opportunity to amend the 2009 Agreement, as amended, TCMUD 12 decided to not revise its contractual reservation of water treatment capacity.
124. The 2009 Agreement, as amended by the 2012 Amendment, does not show that WTCPUA has abused any monopoly power.

The Protested Rates Do Not Show Any Abuse of Monopoly Power by WTCPUA

125. TCMUD 12 never protested any rates charged by the LCRA under the 2009 Agreement.

126. The Protested Rates are lower than the rates charged to TCMUD 12 by the LCRA prior to the assignment of the 2009 Agreement to the WTCPUA, and do not indicate any abuse by the WTCPUA.
127. The Protested Rates are lower than the initial rates charged to TCMUD 12 under the 2009 Agreement, despite TCMUD 12's customer growth during such time period.
128. The Protested Rates are lower than the Prior Rates charged to TCMUD 12 by the WTCPUA, despite TCMUD 12's customer growth during such time period.
129. The Protested Rates do not evidence any abuse of monopoly power by the WTCPUA.

Other Disparate Bargaining Power Factors

130. There is no evidence concerning the other disparate bargaining power factors listed in 16 TAC § 24.133(a)(3)(A), namely, environmental impact, regulatory issues, or otherwise.

Revenue Requirement and Rate Computation Methodology Changes

131. WTCPUA did not change its revenue requirement computation methodology between the Prior Rates and the Protested Rates.
132. The Cash Basis methodology was the revenue requirement methodology used to set the Prior Rates and the Protested Rates. There is no evidence that WTCPUA has changed between the Cash Basis and some other methodology for computing its revenue requirement.
133. WTCPUA did not change the methodology for the computation of its rate. The rate structure was the same for both the Prior Rates and the Protested Rates.
134. Under the 2009 Agreement, WTCPUA and TCMUD 12 agreed that WTCPUA would implement a fixed monthly charge and a flat volumetric rate to charge TCMUD 12 for wholesale water treatment services.
135. The Prior Rates consisted of a fixed monthly charge and a flat volumetric rate.
136. The Protested Rates consisted of a fixed monthly charge and a flat volumetric rate.
137. In establishing the Protested Rates, the WTCPUA did not change the computation of its revenue requirement or rate from one methodology to another.
138. The WTCPUA's computation of its revenue requirement and rate for the Protested Rates do not evidence an abuse of monopoly power.

Transcription Cost

139. Pursuant to 16 TAC § 22.204(b) and the Administrative Law Judge's Order No. 4, each party requesting a copy of the transcript must bear the costs of its copy of the transcript.

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 Texas Water Code § 13.043(f) to consider the Petition of TCMUD 12.
3. The Commission's wholesale service rules, 16 TAC §§24.128, et seq., are applicable to this case because the petition seeks review of rates charged for the sale of wholesale water treatment services, and was filed pursuant to Texas Water Code § 13.043(f).
4. The State Office of Administrative Hearings 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

5. 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. 16 TAC §§ 24.131(b) and 24.132(a), (c), and (d).
6. In this public interest hearing, the petitioner has the burden of proof. 16 TAC § 24.136.
7. 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. 16 TAC § 24.134(a).

Public Interest Factors

8. 16 TAC §24.133(a) sets out the factors to be considered in determining whether the public interest is affected by a protested wholesale rate.
9. The public interest inquiry is limited to the factors set out in 16 TAC § 24.133(a)(1)-(4).
10. 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. 16 TAC § 24.133(b).

Public Interest Considerations in This Case

11. Pursuant to 16 TAC §22.182(a), summary decision is appropriate when no evidence is presented on specific public interest criteria.

12. TCMUD 12 presented no evidence that the factors set out in 16 TAC §§ 24.133(a)(1), (2), (3)(B), (3)(D)-(H), or (4) are applicable in this case. Therefore, summary disposition was appropriate.
13. Under 16 TAC § 24.133(a)(3)(A), 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 services to the purchaser by weighing relevant factors, including in this case:
 - (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; and
 - (C) the seller changed the computation of the revenue requirement or rate from one methodology to another.
14. TCMUD 12 has failed to show disparate bargaining power or a change in computation of the revenue requirement or rate from one methodology to another pursuant to 16 TAC § 24.133(a)(3)(A) and (C).
15. TCMUD 12 has failed to show under the factors set out in 16 TAC § 24.133(a)(3)(A) or (C) that WTCPUA's Protested Rates evidence WTCPUA's abuse of monopoly power in its provision of wholesale water treatment services to TCMUD 12.
16. TCMUD 12 has failed to show that the public interest criteria set out in 16 TAC § 24.133(a)(3)(A) or (C) have been violated by WTCPUA or its protested rates.
17. TCMUD 12 has failed to demonstrate by a preponderance of the evidence that the WTCPUA's Protested Rate is adverse to the public interest.
18. In accordance with 16 TAC § 24.134(a), TCMUD 12's petition for review of WTCPUA wholesale rates should be denied.

Transcript Costs

19. Each party requesting a copy of the transcript must bear the costs of its copy of the transcript pursuant to 16 TAC § 22.204(b).

III. ORDERING PROVISIONS

1. The petition of TCMUD 12 to review the wholesale water rates implemented by WTCPUA is denied with prejudice to refiling.
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, if not expressly granted herein, are hereby denied.

3. Each party requesting a copy of the transcript must bear the costs of its copy of the transcript.
4. The effective date of this Order is the date the Order is final, as provided by Tex. Gov't Code § 2001.144.
5. 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.