

PUC's predecessor agencies. The ALJ assumes the PUC has retained those in the absence of contrary rules, guidance, or precedent.

Accordingly, the ALJ concludes that TCMUD 12 has failed to prove that WTCPUA changed its rate computation methodology when it adopted the Protested Rates.

C. Evidence Does Not Show That WTCPUA Is a Monopoly or Has Abused Any Monopoly Power It Might Have

The ALJ does not conclude that WTCPUA is a monopoly. If the Commission finds otherwise, the ALJ would conclude that WTCPUA has not abused any monopoly power it has.

The Commission's rules do not specify or suggest what the Public Interest Rule means by the phrase "monopoly power." This leads the parties to argue about the meaning of the phrase. TCMUD 12's expert, Jay Zarnikau, PhD, is a doctor of economics and has extensive experience in utility resource planning and regulation, as a consultant, academic researcher, and prior director of utility regulation for the Commission.²⁴⁶ In his opinion, WTCPUA is a monopoly.

Dr. Zarnikau reached that opinion in two ways. First, he notes that the Texas Water Code § 13.001(b) provides that "**retail** public utilities are by definition monopolies in the areas they serve."²⁴⁷ Dr. Zarnikau claims that some of the Participants in WTCPUA—Bee Cave, Hays County, and District 5—are retail public utilities; hence, he concludes WTCPUA is a retail public utility because it serves the area that includes TCMUD 12.²⁴⁸ In post-hearing briefs, TCMUD 12 and the Staff similarly argue that WTCPUA is a **wholesale** monopoly because it is a **retail** public utility, which by definition is a monopoly. The ALJ will skip the details of these arguments. Even assuming for the sake of argument that WTCPUA is a monopoly in its

²⁴⁶ TCMUD Ex. 3 at JZ Ex. 1.

²⁴⁷ Emphasis added by ALJ.

²⁴⁸ TCMUD 12 at 10–11.

provision of water to retail customers, it does not follow that WTCPUA is also a monopoly in its treatment of water for wholesale customers.

Second, in Dr. Zarnikau's opinion, WTCPUA, Bee Cave, Hays County, and District 5 operate as a monopoly because (1) they are operating in concert, (2) they are the only providers of wholesale water services within TCMUD 12's retail service area, (3) there are formidable barriers to other suppliers entering the field to serve TCMUD 12, and (4) building a new system to serve TCMUD 12 would be prohibitively expensive.²⁴⁹ Dr. Zarnikau bases his opinion on economics literature defining monopoly as a market structure in which one producer, or a group acting in concert, exercises exclusive control over all, or nearly all, of a supply of goods or services in a certain area or market to which there are formidable barriers to entry.²⁵⁰ He also testified that antitrust law and courts in the United States have developed a much lower standard to classify a market structure as a monopoly and that in modern economics literature a dominant firm is a monopolist.²⁵¹ Antitrust cases often result in a court considering a 70% market share sufficient to establish a *prima facie* case of monopoly power, even if there are some smaller "fringe" suppliers with a significant market share in the same market.²⁵² According to Dr. Zarnikau, WTCPUA is a monopolist under both the dominant-firm and the one-firm, one-group methods of analysis.²⁵³

WTCPUA's economic expert, Richard A. Baudino, disagrees with Dr. Zarnikau and concludes that WTCPUA is not a monopolist. Mr. Baudino holds bachelor and master degrees in economics and works as an economic consultant specializing in utility ratemaking and planning issues.²⁵⁴ Based in part on an economics textbook used in many universities, Mr. Baudino advocates a one-firm, one-group definition of monopolist that is more stringent

²⁴⁹ TCMUD 12 Ex. 3 at 7-8.

²⁵⁰ TCMUD 12 Ex. 3 at 6.

²⁵¹ TCMUD 12 Ex. 3 at 6.

²⁵² TCMUD 12 Ex. 3 at 6.

²⁵³ TCMUD 12 Ex. 3 at 12-13.

²⁵⁴ WTCPUA Ex. 2 at 3 & attach. A.

than the “modern” one about which Dr. Zarnikau testified.²⁵⁵ He testified that WTCPUA is not a monopoly because (1) it is not TCMUD 12’s only option for water treatment services, (2) it does not have complete control over prices and quantities of services, (3) TCMUD 12 has and has had substantial bargaining power, and (4) high costs of entry do not necessarily suggest a monopoly market.²⁵⁶

The ALJ does not believe that the Commission must choose in this case between the dominant-firm and the one-firm, one-group definitions of monopoly. Either way, the ALJ does not conclude that WTCPUA is a monopoly.

To reach his opinion that WTCPUA is a monopoly, Dr. Zarnikau chiefly relied on two opinions of Mr. DiQuinzio: (1) WTCPUA exercises sole control over the supply of water services, and (2) there is no practical alternative to using its system because a substitute system would be prohibitively expensive.²⁵⁷ Under the Public Interest Rule, those facts, if true, would indicate that WTCPUA has disparately greater bargaining power than TCMUD 12 and suggest that it has monopoly power.²⁵⁸

As discussed above, however, the evidence shows that TCMUD 12 is not legally or contractually prohibited from providing itself with water treatment services. To the contrary, as a municipal utility district, TCMUD 12 has the statutory authority to construct and operate its own water treatment facilities.²⁵⁹ Thus, the evidence does not show that there is a legal barrier to TCMUD 12’s entry into the field to provide itself with water treatment service. Accordingly, WTCPUA does not exercise sole control over the market for water treatment services.

Moreover, TCMUD 12 failed to prove that building its own facilities to serve itself was or is prohibitively expensive. As discussed above, the evidence TCMUD 12 offered and pointed

²⁵⁵ WTCPUA Ex. 2 at 13–14.

²⁵⁶ WTCPUA Ex. 2 at 14–23

²⁵⁷ TCMUD 12 Ex. 3 at 7–8.

²⁵⁸ 16 Tex. Admin. Code § 24.133 (a)(3)(A).

²⁵⁹ Tex. Water Code § 54.201(b).

to concerning the cost to construct its own facilities was so fragmentary and unsupported that the ALJ assigned no evidentiary weight to it. Further, the ALJ found that no expert, including Dr. Zarnikau, could reasonably rely on such a manifestly unreliable estimate. Accordingly, because Dr. Zarnikau's opinion that WTCPUA is a monopoly is built on two key premises not supported by the evidence, the ALJ assigns little evidentiary weight to Dr. Zarnikau's opinion that WTCPUA is a monopoly.

Moreover, even assuming, for the sake of argument, that WTCPUA is a monopoly, the evidence does not show that WTCPUA abused monopoly power it might have in providing water service to TCMUD 12. As already discussed, the Protested Rates about which TCMUD 12 complains are actually lower than the Prior Rates it paid WTCPUA. TCMUD 12's monthly charge decreased from \$10,891.65 to \$8,140.89, and its volumetric rate decreased from \$2.77 to \$2.11 per 1,000 gallons.²⁶⁰ The Protested Rates are even lower than the Initial Rates that TCMUD 12 agreed to pay in the 2009 Water Services Agreement, a monthly charge of \$9,430 and a volumetric rate of \$2.40 per 1,000 gallons.²⁶¹ The ALJ concludes that WTCPUA's lowering of rates indicates an absence of abuse of power over TCMUD 12.

Despite that, TCMUD 12 claims that WTCPUA abused its monopoly power by changing its rate computation methodology in a way that will require TCMUD 12 to pay higher rates in the future. There are two fundamental defects in this argument. First, future rates are not at issue in this case and arguments concerning them are speculative. Any plan that WTCPUA might have for its rates in the future could change.

Second, as discussed at length above, TCMUD 12 failed to prove that WTCPUA changed its rate-computation methodologies. Attempting to show the methodologies had been changed, TCMUD 12 offered cost-of-service analyses that may not be considered in this public interest phase of the case. Further, TCMUD 12's expansive concept of rate-computation methodology is not rooted in the Commission's rules or the M1 Manual and conflicts with the expressed intent of

²⁶⁰ Compare WTCPUA Ex. 3, attach. F at 202 to WTCPUA Ex. 3, attach. G at 205-06 & TCMUD 12 Ex. 1 at JAD 13 at 399.

²⁶¹ TCMUD 12 Ex. 1 at JAD Ex. 4 at 149-51.

the PUC's predecessor agency, TNRCC, in adopting the original Public Interest Rule, which intent the ALJ assumes the PUC has not changed. TNRCC favored a conservative approach that deferred to contractual agreements for wholesale service and did not automatically cancel rates set by contract.

IX. EVIDENCE DOES NOT SHOW THAT THE PROTESTED RATES ADVERSELY AFFECT THE PUBLIC INTEREST

The ALJ concludes that TCMUD 12 failed to prove that: (1) WTCPUA has or LCRA previously had disparately greater bargaining power than TCMUD 12; (2) WTCPUA changed its methodology for computing its revenue requirement or rates when it adopted the Protested Rates; (3) WTCPUA has or LCRA previously had monopoly power over TCMUD 12, or abused that monopoly power if it existed; or (4) the Protested Rates adversely affect the public interest.

X. TRANSCRIPTION COSTS

The official transcription for the Prehearing Conference and the three days of the Hearing on the Merits was paid for by TCMUD 12 at a cost of \$5,434.70.²⁶² The cost of the original transcript and copies for the ALJ and PUC only, was \$3,545.36. TCMUD 12 requests that each party to this case, with the exception of the PUC Staff, be allocated an equal share of the transcription costs, \$709.07 each.

WTCPUA believes that each party should bear only the cost of the transcript that party ordered.²⁶³ District 5 did not order a transcript and believes it should pay no portion of the transcript cost. Hays County does not claim transcript costs. Staff believes that the Commission has no jurisdiction to order an allocation of transcript costs. Bee Cave does not address the issue.

²⁶² TCMUD 12 Initial Brief, attach. D.

²⁶³ 16 Tex. Admin. Code § 22.204(b).

This case was originally filed at TCEQ, before jurisdiction was transferred to the PUC. Under the TCEQ's rules, the parties to a case may be allocated a portion of the transcription costs.²⁶⁴ The TCEQ's rule is no longer applicable to this case, and PUC does not have a similar rule. Not remembering that, the ALJ wrote in SOAH Order No. 1 "when the Commission or the PUC makes a final decision in this case, the costs of the recording and transcription shall be allocated among the parties in accordance to 30 Tex. Admin. Code § 80.23."

The ALJ does not recommend that the Commission allocate to other parties any portion the cost of the transcript for which TCMUD 12 paid. Despite what the ALJ wrote in SOAH Order No. 1, the ALJ sees nothing in chapter 13 of the Texas Water Code, the Public Utility Regulatory Act,²⁶⁵ or the PUC's rules authorizing the ALJ or the PUC to allocate transcript costs among the parties.

XI. RECOMMENDATION

The ALJ recommends that the Commission adopt the following Findings of Fact and Conclusions of Law, find that the evidence does not show that the Protested Rates adversely affect the public interest, and dismiss the TCMUD 12's petition with prejudice to refiling.

XII. FINDINGS OF FACT

1. Travis County Municipal Utility District No. 12 (TCMUD 12) is a conservation and reclamation district created and functioning under article 16, section 59 of the Texas Constitution and chapters 49 and 54 of the Texas Water Code.
2. Travis County Municipal Utility Districts Nos. 11 and 13 (TCMUDs 11 and 13) are also conservation and reclamation districts.

²⁶⁴ 30 Tex. Admin. Code § 80.23.

²⁶⁵ Tex. Util. Code title 2.

3. TCMUDs 11, 12, and 13 are also “retail public utilities” because they are “operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.” Tex. Water Code § 13.002(19).
4. TCMUDs 11, 12, and 13 provide retail water service to geographically distinct areas within a larger area in Travis County, Texas, known as “The Highlands.” TCMUD 11 also serves an adjacent area, known as “Rough Hollow.”
5. On September 25, 2008, TCMUD 12 and the Lower Colorado River Authority (LCRA) entered into a contract (Raw Water Contract) under which LCRA agreed to provide up to 1,680 acre-feet of raw water per year to TCMUD 12 for municipal use by TCMUDs 11, 12, and 13 within their service areas.
6. In October 2009, TCMUD 12 and LCRA entered into a separate wholesale water services agreement (Water Services Agreement). In that agreement, LCRA agreed to divert, transport, and treat, as needed, the raw water that TCMUD 12 had purchased from LCRA under the Raw Water Contract and to deliver that treated water to TCMUD 12 at a specified delivery point.
7. In the Water Services Agreement, TCMUD 12 agreed to pay LCRA:
 - a. a one-time connection fee per each living unit equivalent (LUE) for each new retail customer that connected to the TCMUDs 11, 12, or 13 systems;
 - b. a monthly charge for each calendar month; and
 - c. a monthly volumetric rate for diversion, transportation, treatment, and delivery of the actual amount of water delivered to TCMUD 12 during the month.
8. The connection fee was designed to recover all or part of LCRA’s costs for capital improvements or facility expansions intended to serve new development in LCRA’s service area.
9. The monthly charge was designed primarily to recover TCMUD 12’s allocable share of LCRA’s capital-related costs of the system used to provide service (West Travis County System) that were not recovered through the connection fee.
10. The volumetric rate was designed primarily to recover LCRA’s operation and maintenance costs, together with LCRA’s other costs not recovered through the connection fee or the monthly charge.
11. The connection fee was initially set at \$4,120 per LUE, the monthly charge was initially set at \$9,430 per month, and the volumetric rate was initially set at \$2.40 per 1,000 gallons.

12. The Water Services Agreement provided that LCRA could modify the connection fee, monthly charge, and volumetric rate to recover TCMUD 12's proportionate, just, reasonable, nondiscriminatory, fair, and equitable share of the costs of the West Travis County System.
13. West Travis County Public Utility Agency (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.
14. WTCPUA was formed by the City of Bee Cave, Texas (Bee Cave); Hays County, Texas (Hays County); and West Travis County Municipal Utility District No. 5 (District 5) (collectively, Participants).
15. In keeping with a series of contracts as described below, WTCPUA diverts from Lake Austin in Travis County, Texas, raw water TCMUD 12 purchases from LCRA under the Raw Water Contract and transports, treats, and delivers the treated water to TCMUD 12, in that same county.
16. In January 2012, LCRA and WTCPUA entered into a utilities installment purchase agreement (Utilities Purchase Agreement) by which LCRA sold to WTCPUA the West Travis County System. The system consisted of certain water and wastewater utility facilities in western Travis and Hays Counties, Texas, including the facilities that LCRA had used to serve TCMUD 12 under the Water Services Agreement.
17. In June 2012, LCRA, TCMUD 12, and WTCPUA entered into an agreement (Transfer Agreement), retroactively effective to March 19, 2012, regarding transfer of the operations of the West Travis County System. In that agreement, LCRA assigned to the WTCPUA all obligations and duties of the LCRA under the Water Services Agreement, WTCPUA assumed those obligations and duties, and WTCPUA consented to the assignment and assumption.
18. On March 19, 2012, after assuming operational control of the West Travis County System, WTCPUA adopted the monthly charge and volumetric rate that LCRA had charged, including the rates charged to TCMUD 12 (Initial Rates). Accordingly, WTCPUA's initial monthly charge to TCMUD 12 was \$9,430 and its volumetric rate was \$2.40 per 1,000 gallons.
19. On November 15, 2012, the WTCPUA Board of Directors adopted an order increasing its wholesale water treatment service rates, including those charged to TCMUD 12, by 15.5% effective January 2013 (Prior Rates). Specifically, the Prior Rates increased TCMUD 12's monthly charge from \$9,430 to \$10,891.65 and the volumetric rate from \$2.40 to \$2.77 per 1,000 gallons.
20. TCMUD 12 did not appeal the Prior Rates.

21. On November 21, 2013, the WTCPUA Board of Directors adopted an order revising the wholesale water treatment service rates charged to TCMUD 12, effective January 1, 2014 (Protested Rates). As compared to the Prior Rates, the Protested Rates decreased TCMUD 12's monthly charge from \$10,891.65 to \$8,140.89 and decreased its volumetric rate from \$2.77 to \$2.11 per 1,000 gallons.
22. On March 6, 2014, TCMUD 12 filed a petition with the Texas Commission on Environmental Quality (TCEQ) appealing the Protested Rates and asserting TCEQ had jurisdiction to consider the appeal under Texas Water Code §§ 11.036, 11.041, 12.013, and 13.043(f), and Texas Local Government Code § 572.061(d).
23. TCEQ referred the case to State Office of Administrative Hearings (SOAH) for hearing and issued a notice of a preliminary hearing.
24. On September 1, 2014, jurisdiction over certain functions was transferred from the TCEQ to the Public Utility Commission of Texas (PUC or Commission), including jurisdiction under Texas Water Code §§ 12.013 and 13.043(f). Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), eff. Sept. 1, 2013; Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), eff. Sept. 1, 2013.
25. Jurisdiction under Texas Water Code §§ 11.036 and 11.041 remains with TCEQ.
26. To simplify matters in this case after the transfer of jurisdiction, TCMUD 12 amended its petition to withdraw its claim of jurisdiction under §§ 11.036 and 11.041.
27. TCMUD 12 claims that, by adopting the Protested Rates, WTCPUA has and abused monopoly power because: (1) WTCPUA has disparately greater bargaining power than TCMUD 12; and (2) WTCPUA changed its methodologies used to compute the Protested Rates and the revenue requirement underlying them to the long-term disadvantage of TCMUD 12.
28. Based on the alleged abuse of monopoly power, TCMUD 12 also contends that the Protested Rates adversely affect the public interest.
29. TCMUD 12, on behalf of itself and TCMUDs 11 and 13, asks the PUC to find that the Protested Rates adversely affect the public interest and remand this case to the Administrative Law Judge (ALJ) for further hearing so that the Commission can set the rates TCMUDs 11, 12, and 13 should pay WTCPUA for wholesale water treatment service.
30. The following are the parties in this case:

PARTY	REPRESENTATIVE
TCMUDs 11, 12, and 13 (collectively, TCMUD 12)	Kay Trostle & Miguel Huerta

PARTY	REPRESENTATIVE
WTCPUA	David Klein, Georgia Krump, & Melissa Long
City Of Bee Cave, Texas (Bee Cave)	Jim Haley
Hays County, Texas (Hays County)	Mark D. Kennedy
West Travis County Municipal Utility District No. 5 (District 5)	Randy Wilburn
PUC Staff	Jessica Gray & Sam Chang
Texas Commission on Environmental Quality (TCEQ), Office of Public Interest Counsel (OPIC)	Rudy Calderon

31. The following are the major procedural events in this case:

DATE	EVENT
March 6, 2014	TCMUD 12's petition filed with TCEQ
April 11, 2014	WTCPUA response to petition
April 28, 2014	TCEQ referral to the State Office of Administrative Hearings (SOAH)
May 9, 2014	TCEQ notice of preliminary hearing
June 11, 2014	Preliminary hearing by SOAH for TCEQ
July 14, 2014	Discovery began
August 15, 2014	Deadline for requests for disclosure
September 1, 2014	Jurisdiction transferred from TCEQ to PUC
September 11, 2014	Prehearing conference for PUC
September 12, 2014	TCMUD 12 Motion Amending Jurisdictional Claim & ED's Motion to Withdraw
September 18, 2014	SOAH Order 4 – Memorializing PHC, Granting Motion to Amend Jurisdictional Claim, and Granting Motion to Withdraw
September 30, 2014	SOAH Order 6 – Granting In Part & Denying in Part Motion to Compel
October 10, 2014	TCMUD 12's Interim Appeal of SOAH Order No. 6
October 17, 2014	WTCPUA Response to TCMUD 12's Interim Appeal of SOAH Order No. 6
October 31, 2014	TCMUD 12's direct case evidence filed
November 5, 2014	SOAH Order 9 – Ruling on Motions to Determine Sufficiency and Motion to Compel
November 24, 2014	PUC Order Granting TCMUD's Appeal of SOAH Order No. 6
December 19, 2014	WTCPUA Direct Testimony Filed
February 6, 2015	PUC Staff Direct Testimony Filed
March 6, 2015	Discovery on TCMUD 12 direct case ends
March 6, 2015	WTCPUA Motion for Partial Summary Decision
March 18, 2015	TCMUD 12 Response to WTCPUA Motion for Partial Summary Decision
March 18, 2015	Staff Response to WTCPUA Motion for Partial Summary Decision
March 24, 2015	TCMUD 12 Rebuttal Testimony filed

DATE	EVENT
March 25, 2015	SOAH Order 13 – Granting Part & Denying Part of Motion for Partial Summary Disposition
April 13, 2015	Prehearing Conference
April 15, 2015	SOAH Order 15 – Granting Revised Motion to Compel and Ruling on Objections to Prefiled Evidence
April 17, 2015	SOAH Order 16 – Ruling on Objections to Prefiled Rebuttal Evidence
April 21-23, 2015	Hearing on the Merits
May 1, 2015	SOAH Order 17 – Setting out Post-Hearing Schedule and Briefing Outline
June 26, 2015	Initial Closing Briefs due date
August 3, 2015	Reply Briefs due date; evidentiary record closed

Bargaining Power of the Parties

Alternative Means of Service and Problems in Obtaining Alternative Water Service

32. TCMUDs 11, 12, and 13 have statutory authority to construct and operate water treatment facilities. Tex. Water Code § 54.201(b).
33. Building its own facilities to transport, treat, and deliver the raw water it purchases from LCRA was and is a viable alternative available to TCMUD 12 to serve itself and TCMUDs 11 and 13.
34. TCMUD 12 is free under the Water Services Agreement to reduce the quantity of treatment services it receives from WTCPUA and serve itself.
35. The evidence does not show that TCMUD 12 has or had alternatives available for obtaining water treatment service for itself and TCMUDs 11 and 13 other than self-service and service from LCRA and subsequently WTCPUA.
36. Under the Water Services Agreement, TCMUD 12 is entitled to receive treatment from WTCPUA for a maximum flow of 3,980,000 gallons per day (gpd) of water, which is TCMUD 12's maximum reserved capacity in WTCPUA's system.
37. In a December 17, 2013 notice of the Protested Rates, WTCPUA offered to allow TCMUD 12 to amend its contract to reduce its maximum reserved capacity in WTCPUA's West Travis County Facilities.
38. If TCMUD 12 had accepted the offer and reduced its maximum reserved capacity, that would have reduced the monthly charge TCMUD 12 pays under the Protested Rates and adopted the rate calculation formula underlying the Protested Rates.
39. WTCPUA similarly offered to allow its 13 other wholesale customers to amend their contracts to change their maximum reserved treatment capacity. As of December 19,

(d)

2014, approximately one year after WTCPUA made the offer, six of them had chosen to amend their agreements and change their maximum reserved capacities:

Entity	Original Max. Day Reservation	Amendment Date	Amended Max. Day Reservation
Hays County WCID No. 1	345,600 gpd	Sept. 26, 2013	1,221,120 gpd
Hays County WCID No. 2	618,624 gpd	Aug. 14, 2014	1,166,170 gpd
Reunion Ranch WCID	553,000 gpd	Mar. 28, 2014	603,692 gpd
Senna Hills MUD	907,000 gpd	After Nov. 21, 2013	575,000 gpd
Lazy 9 MUD	5,068,000 gpd	Jan. 16, 2014	2,080,000 gpd
Barton Creek West WSC	965,952 gpd	Mar. 18, 2014	679,000 gpd

40. WTCPUA's offer to amend the Water Services Agreement to allow TCMUD 12 to reduce its reserved capacity in the WTCPUA system was sincere and WTCPUA has left the offer open.
41. WTCPUA could not compel TCMUD 12 to take the offer, and TCMUD 12 chose not to take WTCPUA's offer to reduce its reserved capacity in the WTCPUA system.
42. Under the Water Services Agreement, WTCPUA is obligated to provide TCMUD 12 with treatment services for approximately 1,640 retail water connections, or close to 2,125 LUEs. That is same number of LUEs that could be served with the maximum flow of 3,980,000 gpd that TCMUD 12 is entitled to have treated under the Water Services Agreement.
43. TCMUD 12 has never served close to 2,125 LUEs, and the increase in its number of customers, or connections, over the last six years has been very modest:

Date	Number of Customers
January 1, 2008	0
January 1, 2009	0
January 1, 2010	less than 10
January 1, 2011	10
January 1, 2012	23
January 1, 2013	48
January 1, 2014	132

44. TCMUD 12 is a very young district, the population in its service area is growing, and it hopes to need all of its reserved capacity between the years 2022 and 2025; however, it is not sure how quickly its service area will build out.
45. TCMUD 12 does not now and may never need capacity to treat 3,980,000 gpd of raw water.

46. Reducing all or part of its reserved water treatment capacity in the WTCPUA system was and is an alternative available to TCMUD 12.
47. TCMUD 12 has paid \$1.5 million in connection fees to LCRA. Under the Transfer Agreement, LCRA transferred the collected fees to WTCPUA, and TCMUD 12 is entitled to full credit for them.
48. There is no evidence that a market exists for the connection-fee rights that TCMUD 12 has in the WTCPUA system.
49. The \$1.5 million that TCMUD 12 paid to connect to the West Travis County System is a sunk cost that could be partially or wholly stranded if TCMUD 12 chose to reduce its reserved capacity and build its own treatment facilities.
50. The evidence does not show that the self-service option available to TCMUD 12 is prohibitively more expensive than service from WTCPUA under the Protested Rates.

Other Bargaining Power Factors

51. Before May 2013, WTCPUA hosted six meetings with its wholesale customers to obtain their input on WTCPUA's allocation of its costs. A TCMUD 12 representative attended four of the six meetings.
52. Also, before the rates were adopted, WTCPUA's representatives met with TCMUD 12's representatives on three other occasions to discuss the Protested Rates and receive written input from them.
53. Ultimately, on April 9, 2013, a committee of the wholesale customers proposed an allocation of WTCPUA's debt, operations, and maintenance costs in the monthly charge, which formed the basis for the monthly charge in the Protested Rates that was presented to and adopted by the WTCPUA board on November 21, 2013.
54. No one for TCMUD 12 attended the board meeting to protest the adoption of the Protested Rates.
55. WTCPUA gave TCMUD 12, and its other wholesale customers, a meaningful opportunity to provide input before implementing the Protested Rates.
56. LCRA had excess treatment capacity in 2009, thus LCRA needed a wholesale customer at the same time that TCMUD 12 was searching for a wholesale water treatment service provider, which gave TCMUD 12 significant bargaining power when negotiating with LCRA.
57. For some period after 2009, LCRA, and later WTCPUA, would have had unused treatment capacity if TCMUD 12 had stopped purchasing water treatment service from them. Again, this gave TCMUD 12 significant bargaining power.

58. LCRA never raised the rates to which TCMUD 12 had agreed in October 2009.
59. After TCMUD 12 agreed in June 2012 to the transfer of LCRA's rights and obligations under the Water Services Agreement to WTCPUA, WTCPUA initially kept the same rates LCRA had charged.
60. WTCPUA raised the rates by 15.5% in November 2012, but TCMUD 12 did not appeal that increase.
61. The evidence does not show that TCMUD 12 had significantly less bargaining power than: (1) LCRA in October 2009 when LCRA and TCMUD 12 entered into the Water Services Agreement; (2) WTCPUA in June 2012 when TCMUD 12, WTCPUA, and LCRA entered into the Transfer Agreement; or (3) WTCPUA in November 2013 when WTCPUA adopted the Protested Rates.

Methodologies for Computation of Revenue Requirement and Rates

62. The American Water Works Association publishes a manual on water utility rates (M1 Manual), also known as *Principles of Water Rates, Fees, and Charges*. Experts on rate making in the water industry often rely on the M1 Manual for guidance. According to the M1 Manual, the generally accepted rate-setting methodology includes three categories of analysis:
 - Revenue Requirement analysis, which compares revenues of the utility to its operating and capital costs to determine the adequacy of existing rates to recover the utility's costs;
 - Cost-of-service analysis, which allocates the revenue requirements to the various customer classes of service in a fair and equitable manner; and
 - Rate design analysis, which considers both the level and structure of the rate design to collect the distributed revenue requirements from each class of service.
63. The M1 Manual also states that there are two generally accepted approaches for establishing a utility's revenue requirement: the cash-needs approach and the utility-basis approach.
64. WTCPUA used the cash-needs method to determine its revenue requirement for both the Prior Rates and the Protested Rates.
65. When it computed the revenue requirement for the Protested Rates, WTCPUA used the same methodology it had used for the Prior Rates.

66. The Prior Rates included a uniform volume charge of \$2.77 per 1,000 gallons for wholesale water services customers that had their own raw water supply, including TCMUD 12. However, the volumetric rate per 1,000 gallons that WTCPUA charges TCMUD 12 under the Protested Rates differs from the volumetric rate adopted at the same time for other wholesale customers with their own raw water.
67. According to the M1 Manual, a "rate structure" is developed during the rate design analysis and classifies customers, establishes the frequency of billing, and identifies the charges or schedule of charges that each classification of customers will be assessed.
68. The Commission's rules refer to several possible rate structures, including declining-block and inclining-block, and phased or multi-step volumetric rates. 16 Tex. Admin. Code §§ 24.32(b), 24.34(c).
69. A change in the rate structure would reflect a change in rate computation methodology. *An Order Denying the Petitions of Navarro County Wholesale Ratepayers, et al. to Review the Wholesale Rate Increase Imposed by the City of Corsicana*, TCEQ Docket No. 2009-1925-UCR, SOAH Docket No. 582-10-1944, Finding of Fact 69 at 12 (Nov. 9, 2011).
70. WTCPUA used the same rate structure for both the Prior Rates and the Protested Rates it has charged TCMUD 12. Both include a flat monthly charge, sometimes referred to as a "Minimum Bill," and a flat volumetric rate per 1,000 gallons of water used. The monthly charge was \$10,891.65 and now is \$8,140.89. The volumetric rate was \$2.77 and now is \$2.11 per 1,000 gallons.
71. The evidence does not show that WTCPUA changed its rate computation methodology when it adopted the Protested Rates.

Evidence Does Not Show That WTCPUA Has Abused Monopoly Power

72. The evidence does not show that there is a barrier to TCMUD 12's entry into the field to provide itself with water treatment service. Accordingly, WTCPUA does not exercise sole control over the market for water treatment services.
73. TCMUD 12 failed to prove that building its own facilities to serve itself was or is prohibitively expensive.
74. The Protested Rates about which TCMUD 12 complains are actually lower than the Prior Rates it paid WTCPUA. TCMUD 12's monthly charge decreased from \$10,891.65 to \$8,140.89, and its volumetric rate decreased from \$2.77 to \$2.11 per 1,000 gallons.
75. The Protested Rates are actually lower than the Initial Rates that TCMUD 12 agreed to pay in the Water Services Agreement: a monthly charge of \$9,430 and a volumetric rate of \$2.40 per 1,000 gallons.

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76. WTCPUA's lowering of the Protested Rates indicates it has not abused any power it might have over TCMUD 12.

Transcript

77. The cost of the original transcript and copies for the ALJ and PUC was \$3,545.36, which TCMUD 12 paid. TCMUD 12 requests that each party to this case, with the exception of the PUC Staff, be allocated an equal share of that transcription costs, \$709.07 each.

XIII. CONCLUSIONS OF LAW

Jurisdiction

1. The Commission has jurisdiction over TCMUD 12's petition. Tex. Water Code §§ 13.002 (21), (25), .043(f).

Burden Of Proof

2. TCMUD 12 has the burden of proving that the Protested Rates are adverse to the public interest. 16 Tex. Admin. Code § 24.136.

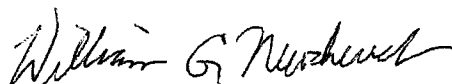
Requirement for an Initial Public Interest Determination

3. The Commission has adopted rules to govern petitions and appeals concerning wholesale water and sewer service. 16 Tex. Admin. Code ch. 24, subch. I. The rules set forth substantive guidelines and procedural requirements concerning an appeal pursuant to Texas Water Code §13.043(f). 16 Tex. Admin. Code § 24.128(2).
4. 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 Tex. Admin. Code § 24.134(a).
5. The Commission has adopted a rule (Public Interest Rule) specifying how it will determine if a protested rate adversely affects the public interest. 16 Tex. Admin. Code § 24.133.
6. The cash-needs method is one of the methods used to calculate revenue requirement. 16 Tex. Admin. Code §§ 24.34(c), .129(3), .135(b).
7. WTCPUA used the cash-needs method for both the Prior Rates and Protested Rates.
8. WTCPUA used the same methodology to compute the Prior Rates and Protested Rates: a monthly fee and a flat volumetric rate.

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9. TCMUD 12 failed to prove that WTCPUA has, or LCRA previously had, disparately greater bargaining power than TCMUD 12.
10. TCMUD 12 failed to prove that WTCPUA changed its methodology for computing its revenue requirement or rates when it adopted the Protested Rates.
11. TCMUD 12 failed to prove that WTCPUA had, much less abused, monopoly power when it adopted the Protested Rates.
12. TCMUD 12 failed to prove that the Protested Rates adversely affect the public interest.
13. TCMUD 12's petition appealing the Protested Rates WTCPUA charges should be denied and dismissed with prejudice to refiling.
14. Nothing in chapter 13 of the Texas Water Code; the Public Utility Regulatory Act; or the Commission's rules authorizes the Commission to allocate transcript costs among the parties.
15. TCMUD 12's request that each party to this case, with the exception of the PUC Staff, be allocated an equal share of the transcription costs should be denied.

SIGNED September 30, 2015.



WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS