

which unambiguously states that “retail public utilities are by definition monopolies in the areas they serve.”¹⁹¹ The ALJ erred by failing to properly apply the statutory definition which, in turn, lead to his error in concluding WTCPUA is not a monopoly under TEX. WATER CODE § 13.001(b). The Judge created a conundrum by focusing on the word “**retail**”¹⁹² in the term “retail public utility” and then being unable to reconcile that with the fact that WTCPUA is TCMUD 12’s **wholesale** water services provider.¹⁹³ The ALJ concludes with this erroneous opinion: “Even assuming for the sake of argument that WTCPUA is a monopoly in its provision of water to *retail* customers, it does not follow that WTCPUA is also a monopoly in its treatment of water for *wholesale* customers.”¹⁹⁴ There is nothing in the statutory definition of “retail public utility” that requires or suggests a retail public utility is one that provides “*retail* water or sewer service. The definition of Retail Public Utility references “service”, and that term is defined in TEX. WATER CODE § 13.001(21) in relevant part, as “any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the

to TEX. LOCAL GOV’T CODE § 572.052(c)(2), WTCPUA, as a public utility agency, is a “political subdivision of the state.” Accordingly, WTCPUA is a retail public utility under TEX. WATER CODE §§ 13.002(19) and 13.043(f). .

¹⁹⁰ Tex. Water Code § 13.001(a) This **chapter** is adopted to protect the public interest inherent in the rates and services of retail public utilities. (c) The purpose of this chapter is to establish a comprehensive regulatory scheme that is adequate to the task of regulating retail public utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the retail public utilities.

¹⁹¹ The reference in §13.001(b) to the “areas they serve,” in this case was originally LCRA’s “service area” as depicted in the Wholesale Water Services Agreement, Exhibit B and is defined as the West Travis County Regional Water System. It is now called the PUA Water Service Area. *See*, TCMUD 12 Exhibit No. 3 (Zarnikau Direct) at JZ Exhibit 2, p. 78 (Exhibit C – PUA Water Service Area). Under section 3.2 of the LCRA-WTCPUA Utilities Installment Purchase Agreement, LCRA’s CCN No. 11670 was transferred from LCRA to WTCPUA. TCMUD 12 Exhibit No. 1 (DiQuinzio Direct), at JAD Exhibit 8, page 13 of 124.

¹⁹² To confirm his focus on these terms, the ALJ bolds **retail** and **wholesale** on page 47 of the PFD.

¹⁹³ To resolve the conundrum, it is helpful to understand the term “*retail public utility*” is meant to include entities, such as municipal corporations and political subdivisions, that are expressly excluded from the term “*public utility*.” Tex. Water Code § 13.002(23) provides in part: “Water and sewer utility,” “public utility,” or “utility” means any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, *other than* a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county . . . owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use . . .”

¹⁹⁴ PFD at 47–48 (emphasis added). Proposed FOF 13- 15 (describing WTCPUA as a public utility agency but failing to find it is a retail public utility); Contrast FOF 3 (TCMUDs 11, 12 and 13 are “retail public utilities” citing to § 13.002(19)); Proposed COL 11 (TCMUD 12 failed to prove that WTCPUA had, much less abused, monopoly power when it adopted the Protested Rates.)

performance of its duties under this chapter to . . . other retail public utilities . . .” WTCPUA is a political subdivision operating and controlling in this state facilities for providing potable water service to TCMUD 12, as well as other retail public utilities, and is therefore a retail public utility.

In addition to being a monopoly by definition under the Water Code, WTCPUA is a monopoly based upon an analysis of economic and antitrust law because it holds a dominant position in the market and has the ability to control prices and quantities associated with the provision of wholesale water services. WTCPUA also exercises exclusive control over wholesale water services to TCMUD 12 under the Wholesale Water Services Agreement. WTCPUA is the only existing provider of services for the diversion, treatment and delivery of water to TCMUD 12, and there are significant barriers preventing an alternative provider from easily entering the market. The contract between WTCPUA and its three members, also create formidable barriers to entry by any hypothetical third party wholesale water service provider.

The 40 year Wholesale Water Service Agreement that, in conjunction with the Transfer Agreement, governs the relationship between TCMUD 12 and WTCPUA requires TCMUD 12 to use all the water WTCPUA is obligated to provide (i.e., up to 3.98 MGD daily flow) *prior to using potable water obtained from any other source*. TCMUD 12 is therefore not “free to use an alternative wholesale water service provider” because its current and reasonably foreseeable demand is nowhere near 3.98 MGD. Additionally, WTCPUA’s HHI indicates it operates in a highly concentrated market, which evidences a greater ability to control prices and quantities, and supports a finding that WTCPUA has monopoly power. Finally, due to the price-inelasticity of demand for potable water, WTCPUA has greater control over prices.

WTCPUA’s disparately greater bargaining power originates in the long-term Wholesale Water Services Contract that requires TCMUD 12 to buy wholesale water services from WTCPUA until its demand exceeds 3.98 MGD, which has yet to occur. In addition, WTCPUA’s greater bargaining power exists because that Agreement, and the Transfer Agreement, give WTCPUA the unilateral right to adjust the Monthly Charge and Volume Rate.

TCMUD 12 has no alternatives to obtain wholesale water service even if it was allowed to use an alternative under the Wholesale Water Service Agreement. TCMUD 12 did not have the ability to self-provide water diversion, treatment, or delivery service at any time, and the ALJ’s conclusion to the contrary rests on a failure to apply a reasonable standard. There is

simply no evidence that there is an existing alternative to TCMUD 12's continued use of the West Travis County Water System operated by WTCPUA. If the Commission were to agree that TCMUD 12 is required to construct its own completely new water system, it must that would be financial infeasible because TCMUD 12 does not now and has not at any time had a tax base that would have enabled it, consistent with bond restrictions, to finance the extensive facilities that would be necessary to replace the wholesale water services it obtains from WTCPUA.

WTCPUA exercised its disparately greater bargaining power in setting the Protested Rates because TCMUD 12 had no alternative means of obtaining potable water for its retail customers. Under the Commission's Rule, disparate bargaining power is a factor demonstrating abuse of monopoly power.

Next, the ALJ concludes that WTCPUA did not abuse its monopoly power, if it possessed it, because the Protested Rates are lower than the Prior Rates.¹⁹⁵ However, nothing in the statute or rule supports this conclusion, instead TEX. WATER CODE § 13.043(f) requires the Commission to review "a decision of the provider of water service affecting the amount paid for water service" and it is undisputed that WTCPUA's action in November 21, 2013 affected the amount TCMUD 12 pays for water service. Similarly, the Public Interest rule does not mention "increased or higher or larger" rate, and it is error to imply a word or phrase that is not included in the rule.¹⁹⁶ The word "rate" is broadly defined and encompasses the "methodology" about which TCMUD 12 complains. The methodology approved by the Board meant that TCMUD 12's *monthly charge* was designed to increase from \$ 8,140.89 in 2014, to more than double that (\$16,775.17) in 2015, and to continue escalating annually, reaching \$85,849.38 by 2023. *TCMUD 12 appealed WTCPUA's 2014 rate decision because it could only obtain review of the new methodology following its initial implementation – i.e., it is an integral part of the WTCPUA's November 21, 2013 rate decision for which TCMUD 12 had to initiate an appeal within 90 days, under Tex. Water Code § 13.043(f).*

The ALJ also concludes that WTCPUA did not abuse monopoly power based upon a flawed analysis of the evidence concerning change of methodology. As discussed at length in

¹⁹⁵ PFD at 50: "Even assuming, for the sake of argument, that WTCPUA is a monopoly, the evidence does not show that WTCPUA abused monopoly power . . . [because] lowering of rates indicates an absence of abuse of power over TCMUD 12."

¹⁹⁶ *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981). See also; *City of Houston v. Swinerton Builders, Inc.*, 233 S.W.3d 4, 12 (Tex.App.-Houston [1st Dist.] 2007, no pet.).

Section VIII. B., above, the Wholesale Water Services Agreement contains contractual methodologies for determining the revenue requirement and Monthly Charge and Volumetric Rates. WTCPUA developed different methodologies for the 2014 Protested Rates, as described in Mr. Joyce's analysis. The ALJ has acknowledged that in rejecting Mr. Joyce's analysis he applied a broad interpretation of the prohibition on considering "cost of service analysis" in this Public Interest phase. TCMUD 12 encourages the Commission to accept that the changes to methodology explained by Mr. Joyce were not an impermissible cost of analysis and to reject the PFD's conclusion on this issue.

In addition, the evidence demonstrates that the methodologies used to set the Protested Rates are different from the methodologies set out in the Wholesale Water Services Agreement. The ALJ states he is adopting a conservative approach and giving deference to that Agreement, but in reality his holding allows the WTCPUA to impose unilateral changes to the methodology found in the Agreement, which evidences its abuse of monopoly power in setting the Protested Rates.

If the WTCPUA's actions are not a violation of the Public Interest, and the Commission does not proceed to a cost of service phase, TCMUD 12, and the other wholesale customers that did not accept the contract amendment, are left to the whim and mercy of the only supplier of wholesale water services in the area. The ultimate impact, of course, it on the residential ratepayers in The Highlands who will shoulder the inevitable rate increases because TCMUD 12 has no recourse – the review of WTCPUA's cost of service by the Commission to ensure the rates are fair and reasonable.

IX. EVIDENCE SHOWS THAT THE PROTESTED RATES ADVERSELY AFFECT THE PUBLIC INTEREST

The absence of any viable, reasonable alternative supplier that could provide wholesale water services to The Highlands enabled WTCPUA, which is a monopoly, to exercise its disparately greater bargaining power in setting the Protested Rates and that evidences an abuse of monopoly power. WTCPUA's changes to the methodology for computing the revenue requirement and the wholesale Volume Rate and Monthly Charge also evidence an abuse of monopoly power. Abuse of monopoly power is a violation of one of the public interest criteria found in P.U.C. Subst. R. 24.133(a) and that violation requires a finding that the Protested Rate adversely affects the public interest.

X. TRANSCRIPTION COSTS

TCMUD 12 does not except to this section of the PFD.

XI. CONCLUSION

In conclusion, based upon the evidence presented in this case and the arguments herein, TCMUD 12 respectfully prays that the Commission decline to adopt the PFD and the ALJ's proposed Findings of Fact and Conclusions of Law, and instead adopt the attached Findings of Fact and Conclusions of Law and enter an Order that states:

The Commission has determined the protested rates, including WTCPUA's new methodology for setting the wholesale water services rates, adversely affects the public interest. The Commission concludes the following public interest criteria have been violated: WTCPUA abused its monopoly power in its provision of wholesale water services to TCMUD 12 based upon WTCPUA's disparate bargaining power and WTCPUA changed the computation of the revenue requirement and rate from one methodology to another. The Commission remands the matter to the State Office of Administrative Hearings for further evidentiary proceedings on the rate pursuant to P.U.C. SUBST. R. 24.135.

Respectfully Submitted,

SMITH TROSTLE & HUERTA LLP

4401 Westgate Blvd., Ste. 330

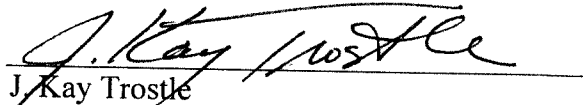
Austin, Texas 78745

(512) 494-9500 (Telephone)

(512) 494-9505 (Facsimile)

ktrostle@smithtrostle.com

By:



J. Kay Trostle

State Bar No. 20238300

Miguel A. Huerta

State Bar No. 00787733

**ATTORNEYS FOR TRAVIS COUNTY
MUNICIPAL UTILITY DISTRICT NO. 12**

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 2015, a true and correct copy of the above and foregoing document is being served via electronic mail, facsimile, U.S. mail and/or hand delivery to all parties of record.


J. Kay Trostle



**Comparison of Existing Contractual Methodology with
Methodology Used to Set Protested Rates & As Found in Proposed Contract Amendment**

Existing Contractual Methodology in Wholesale Water Services Agreement¹	New Contractual Method in Proposed and Executed Contract Amendments²
<p><u>Monthly Charge</u></p> <p>District No. 12 also shall pay LCRA a monthly charge (the "<u>Monthly Charge</u>") for each full calendar month after the Effective Date. The Monthly Charge initially shall be \$9,430 per month; provided, however, that the Monthly Charge shall not go into effect until the Effective Date. The Monthly Charge has been designed primarily to recover District No. 12's allocable share of the capital-related Costs of the LCRA System not recovered in the Connection Fee. The Monthly Charge shall be just and reasonable and established in accordance with the provisions of this Agreement and applicable legal requirements.</p>	<p><u>Monthly Charge</u></p> <p>4. Section 4.01.b. is hereby deleted and replaced with the following:</p> <p>b. District shall also pay PUA a monthly charge (the "Monthly Charge") for each month after the execution of this First Amendment. The Monthly Charge shall be determined by the following formula:</p> <p>{Annual Allocated Debt Service Payment + (25% times coverage * Annual Allocated Debt Service Payment) - (Effective Impact Fee Credit * Annual Debt Service Payment) }/ 12 months.</p> <p>(i) The Annual Allocated Debt Service Payment, from time to time due and payable, shall be based on the District's allocated pro rata share of the PUA's capital costs for the Regional Facilities (including interest expense) prior to the PUA's issuance of bonds to fund the Regional Facilities so long as the total capital cost allocated to the District is recovered within the life of the bonds, including interest expense. The District's pro rata share of the PUA's capital costs is calculated based on its Max Day Reservation, multiplied by the PUA's Cost per Gallon of the Regional Facilities. <u>Schedule B</u> attached hereto and incorporated herein for all purposes sets forth the current schedule of the Annual Allocated Debt Service Payment.</p> <p>The PUA's Cost per Gallon of the Regional Facilities, further classified as "System Wide" Facilities shall be calculated by dividing the total cost of the System Wide Regional Facilities by 27,000,000 gallons. The PUA's Cost per Gallon of</p>

¹ Terms in TCMUD's Wholesale Water Services Agreement that would have been deleted and replaced with the provisions in the right column if it had accepted the Contract Amendment; TCMUD 12 Exhibit No. 1 (DiQuinzio Direct), JAD Exhibit 4.

² Provisions from Proposed Contract Amendment (WTCPUA Ex. 1, Attachment Q) and this version (referencing specific section numbers to be deleted and including Schedule B, is from the Lazy Nine MUD executed Contract Amendment, TCMUD 12 Exhibit No. 18, First Amendment to Wholesale Water Service Agreement (Lazy Nine MUD No. 1A), at 2 and 3 (and Schedule B, attached).

the Regional Facilities, further classified as "Hwy 71" shall be calculated by dividing the total cost of the Hwy 71 Regional Facilities by 14,829,230 gallons. The PUA's Cost per Gallon of the Regional Facilities, further classified as "US 290" shall be calculated by dividing the total cost of the US 290 Regional Facilities by 12,170,770.

Schedule B may be amended from time to time by the PUA to reflect (i) future LCRA installment payments (ii) future debt issuances associated with future Regional Facility projects; as well as any credits to the District for prepayment by the District of capital costs for the Regional Facilities.

The Effective Impact Fee Credit shall be determined based upon the following formula:

Project Costs Recovered by Impact Fees / Total Project Costs

Project Costs Recovered by Impact Fees shall be determined by the following formula:

Project costs eligible for impact fee recovery as determined by the PUA's most recent impact fee study * the percent level of impact fees adopted by the PUA Board of Directors (currently 50%).

The District shall pay the Monthly Charge regardless of whether the District meets the buildout projections used' to develop the annual debt payment schedule.

The PUA shall not allocate costs for future Regional Facilities to the District beyond 27 MGD of water treatment plant capacity if the District establishes to the PUA's satisfaction that it has reached eighty percent (80%) of its projected build out of the Wholesale Service Area six months prior to the PUA's issuance of bonds for such expansion.

(ii) Within ten business days of a written request from the PUA, the District shall provide the PUA with copies of the District's monthly operating reports indicating the District's peak day consumption. At any time, the PUA may also install, at its sole discretion, a max-day meter and/or a flow regulator on the District's Retail System to assess or control actual maximum daily demands by the District.

	<p>If the PUA determines that the District is exceeding the Max Day Reservation the District will be subject to a surcharge as determined by the PUA's service rules and policies.</p>
<p><u>Volume Rate</u></p> <p>District No. 12 also shall pay LCRA a volumetric rate (the "Volume Rate") for diversion, transportation, treatment and delivery of the actual amount of water delivered to District No. 12, as measured by the Master Meter at the Delivery Point, including all water used or lost due to leakage or for any other reason within the District Service Area. The Volume Rate initially will be \$2.40 per 1,000 gallons. The Volume Rate shall be designed primarily to recover the operation and maintenance related Costs of the LCRA System, together with any other Costs of the LCRA System not recovered through the Connection Fee or the Monthly Charge. The Volume Rate does not include, however, any charges for raw water and District No. 12 shall remain liable for such costs under the Raw Water Contract. The Volume Rate will be just and reasonable and established in accordance with the provisions of this Agreement and applicable legal requirements.</p>	<p><u>Volume Rate</u></p> <p>Section 4.01(c) of the Wholesale Water Agreement is deleted in its entirety and replaced with the following;</p> <p>District shall also pay PUA a volumetric rate (the "Volume Rate") for diversion, transportation, treatment and delivery of the actual amount of water delivered to the District as measured through the Delivery Point(s), including all water used or lost due to leakage or for any other reason within the Retail Service Area. The Volume Rate shall recover the PUA's expenses associated with operating and maintaining the Regional Facilities, including a systems raw water loss fee per thousand gallons to be calculated as follows:</p> <p>[LCRA Raw Water cost per Thousand Gallons / (1-.10 water loss)]/10</p> <p>The PUA shall utilize the base-extra capacity methodology performed by a qualified professional to determine appropriate Volume Rate for each wholesale customer and may be adjusted from time to time by the PUA's Board of Directors.</p>

Schedule B

Schedule of Annual Allocated Debt Service Payments

4228656.3

West Travis County Public Utility Agency
FYE2014 Wholesale Customer Minimum Bill Analysis

Schedule B

Lazy Nise MUD
Series 2013 Debt Payment Schedule

Estimated Effective Interest Rate Series 2013 4.89%

Capital Cost Allocation Funded with Series	\$	5,771,011
Plus Reserves		370,590
Plus Estimated Issuance Costs (2%)		122,832
Capital Cost Allocation	\$	6,264,432

Series 2013	Beginning Balance	Interest Expense	Subtotal	Total Annual Debt Payment*	Ending Balance
2014	\$ 6,264,432	\$ 306,141	\$ 6,570,574	\$ 63,827	\$ 6,506,747
2015	\$ 6,506,747	\$ 317,983	\$ 6,824,730	\$ 106,378	\$ 6,718,352
2016	\$ 6,718,352	\$ 328,324	\$ 7,046,676	\$ 148,929	\$ 6,897,746
2017	\$ 6,897,746	\$ 337,091	\$ 7,234,838	\$ 202,119	\$ 7,032,719
2018	\$ 7,032,719	\$ 343,687	\$ 7,376,406	\$ 255,308	\$ 7,121,099
2019	\$ 7,121,099	\$ 348,006	\$ 7,469,105	\$ 308,497	\$ 7,160,608
2020	\$ 7,160,608	\$ 349,937	\$ 7,510,546	\$ 361,686	\$ 7,148,860
2021	\$ 7,148,860	\$ 349,363	\$ 7,498,223	\$ 414,875	\$ 7,083,348
2022	\$ 7,083,348	\$ 346,161	\$ 7,429,509	\$ 468,064	\$ 6,961,445
2023	\$ 6,961,445	\$ 340,204	\$ 7,301,650	\$ 510,615	\$ 6,791,034
2024	\$ 6,791,034	\$ 331,876	\$ 7,122,911	\$ 510,615	\$ 6,612,295
2025	\$ 6,612,295	\$ 323,141	\$ 6,935,437	\$ 510,615	\$ 6,424,821
2026	\$ 6,424,821	\$ 313,979	\$ 6,738,801	\$ 510,615	\$ 6,228,186
2027	\$ 6,228,186	\$ 304,370	\$ 6,532,556	\$ 510,615	\$ 6,021,940
2028	\$ 6,021,940	\$ 294,291	\$ 6,316,231	\$ 510,615	\$ 5,805,616
2029	\$ 5,805,616	\$ 283,719	\$ 6,089,335	\$ 510,615	\$ 5,578,720
2030	\$ 5,578,720	\$ 272,631	\$ 5,851,350	\$ 510,615	\$ 5,340,735
2031	\$ 5,340,735	\$ 261,000	\$ 5,601,736	\$ 510,615	\$ 5,091,120
2032	\$ 5,091,120	\$ 248,802	\$ 5,339,922	\$ 510,615	\$ 4,829,307
2033	\$ 4,829,307	\$ 236,007	\$ 5,065,314	\$ 510,615	\$ 4,554,699
2034	\$ 4,554,699	\$ 222,587	\$ 4,777,286	\$ 510,615	\$ 4,266,671
2035	\$ 4,266,671	\$ 208,511	\$ 4,475,182	\$ 510,615	\$ 3,964,567
2036	\$ 3,964,567	\$ 193,747	\$ 4,158,314	\$ 510,615	\$ 3,647,699
2037	\$ 3,647,699	\$ 178,262	\$ 3,825,961	\$ 510,615	\$ 3,315,346
2038	\$ 3,315,346	\$ 162,020	\$ 3,477,366	\$ 510,615	\$ 2,966,751
2039	\$ 2,966,751	\$ 144,984	\$ 3,111,735	\$ 510,615	\$ 2,601,120
2040	\$ 2,601,120	\$ 127,116	\$ 2,728,236	\$ 510,615	\$ 2,217,621
2041	\$ 2,217,621	\$ 108,375	\$ 2,325,995	\$ 510,615	\$ 1,815,380
2042	\$ 1,815,380	\$ 88,717	\$ 1,904,097	\$ 510,615	\$ 1,393,482
2043	\$ 1,393,482	\$ 68,099	\$ 1,461,581	\$ 510,615	\$ 950,966
2044	\$ 950,966	\$ 46,473	\$ 997,439	\$ 510,615	\$ 486,824
2045	\$ 486,824	\$ 23,791	\$ 510,615	\$ 510,615	\$ 0

*Total Annual Minimum Bill = Total Annual Payment + (Total Annual Payment * 25% Times Coverage) - (Total Annual Payment * Impact Fee Credit)

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. 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.
3. TCMUDs 11, 12, and 13 (collectively, the "Districts") are "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. The term of the Raw Water Contract is 40 years.
6. In October 2009, TCMUD 12 on behalf of itself and TCMUD 11 and 13 (collectively, the Districts) and LCRA entered into a separate wholesale water services agreement (the Agreement). The term of the Agreement is the same as the term for the Raw Water Contract, 40 years. Under the Agreement, LCRA is obligated to divert, transport, and treat, as needed, the raw water that TCMUD 12 purchases from LCRA under the Raw Water Contract and to deliver that treated water to TCMUD 12 at a specified delivery point, located on Hwy 71. Under the Agreement, TCMUD 12 is obligated to use all the water made available under the Raw Water Contract and that is provided through the wholesale water services under the Agreement, prior to using potable water obtained from any other source. If TCMUD 12's demand for wholesale water service ever exceeds the amount specified in the Agreement, TCMUD 12 shall notify LCRA of the shortage and the amount of additional potable water needed. If LCRA is unable to provide the additional water required by TCMUD 12, then, TCMUD 12 at its option may acquire water from other sources. If at any time LCRA is unable to provide the amount of wholesale water services required by the Agreement, then LCRA will be in default and TCMUD 12, at its option, may acquire water from other sources, provided TCMUD 12

has adopted and is enforcing the conservation plan and drought contingency plan required by the Agreement.

7. The Agreement is assignable by LCRA to unaffiliated third parties but requires the express written consent of TCMUD 12, which consent shall not be unreasonably withheld or delayed.
 8. Under the Agreement, TCMUD 12 was obligated to pre-pay LCRA Connection Fees totaling at least \$1,500,000 on the following schedule:
 - a. \$350,200 within 15 days of the Effective Date of the Agreement;
 - b. \$350,200 on or before April 1, 2010;
 - c. \$199,900 on or before May 15, 2011;
 - d. \$199,900 on or before May 15, 2012;
 - e. \$199,900 on or before May 15, 2013; and
 - f. \$199,900 on or before May 15, 2014.
- TCMUD 12 timely prepaid the \$1,500,000 as required by the Agreement.
9. TCMUD 12 is obligated to pay LCRA the following additional rates:
 - a. Connection Fee for each new retail water customer that connects to the District System, which was initially \$4,120 per LUE (Living Unit Equivalent);
 - b. Monthly Charge for each full calendar month after the Effective Date, which was initially \$9,430 per month; and
 - c. Volumetric Rate for diversion, transportation, treatment, and delivery of the actual amount of water delivered to TCMUD 12 during the month, as measured by the Master Meter at the Delivery Point, and which was initially \$2.40 per 1,000 gallons.
 10. The Connection Fee was designed to fund or recover all or part of the Costs of the LCRA System for capital improvements or facility expansions intended to serve new development, as defined in the Texas Impact Fee Law, in LCRA's service area, and upon payment, TCMUD 12 has a guaranteed reservation of capacity in the LCRA System for the number of LUEs for which a Connection Fee has been paid. The Connection Fee is to be reasonable and just and established as required by law and in accordance with the provisions of the Agreement.
 11. The Monthly Charge was designed primarily to recover TCMUD 12's allocable share of the capital-related costs of the LCRA System that were not recovered through the Connection Fee. The Monthly Charge must be just and reasonable and established in accordance with the provisions of the Agreement and applicable legal requirements.

12. The Volume Rate was measured at the Master Meter so the amount of water delivered and paid for under the Volume Rate included all water used or lost due to leakage or for any other reason within the District Service Area. The Volume Rate was designed primarily to recover operation and maintenance related costs of the LCRA System, together with other Costs of the LCRA System not recovered through the Connection Fee or the Monthly Charge. The Volume Rate does not include any charges for raw water and TCMUD 12 remained liable for such costs under the Raw Water Contract.
13. The Agreement allowed LCRA, at any time while the Agreement is in effect, and subject to applicable law, to modify the Connection Fee, Monthly Charge, and Volume Rate consistent with the terms of the Agreement as appropriate to recover the Costs of the LCRA System in a just, reasonable, and nondiscriminatory manner from TCMUD 12 and the other customers of the LCRA System. No portion of the Costs of the LCRA System can be recovered by LCRA more than one time, and therefore, any amount included in the Connection Fee, the Monthly Charge, or the Volume Rate, may not also be included in or recovered through any other rate or charge. All charges to TCMUD 12 under the Agreement must be fair, and equitable and allow LCRA to recover, but not over-recover, TCMUD 12's proportionate share of the Costs of the LCRA System.
14. LCRA provides Wholesale Water Service to TCMUD 12 under the Agreement and retail potable water service to other customers from the LCRA System, and therefore the term "Costs of the LCRA System" shall not include any costs properly attributable to the provision of retail potable water service by LCRA from the LCRA System, such as costs of retail distribution lines and related valves, etc.; water losses within LCRA's retail service area, costs associated with retail customer service, retail billing and collection costs, or any other costs, whether similar or not, that are reasonably related to the distribution of water and provision of water service to LCRA's retail customers.
15. 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. 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, the Participants).
16. WTCPUA is a retail public utility because it is a political subdivision operating, maintaining, and controlling in this state facilities for providing potable water service and sewer service for compensation. The service at issue in this docket is provided by WTCPUA, a retail public utility, to TCMUD 12, another retail public utility.
17. In January 2012, LCRA and WTCPUA entered into a Utilities Installment Purchase Agreement (Installment Purchase Agreement) under which LCRA transferred operation of the West Travis County System to WTCPUA effective March 19, 2012. WTCPUA is obligated to make installment payments, including Equity Payments and Debt Service Payments, as specified in the Installment Purchase Agreement and upon WTCPUA's full

payment of all Installment Payments, the final being the 2019 Equity Payment, LCRA will have conveyed legal title and all capacity interest in the System Assets to WTCPUA. LCRA retains legal title to the Central facilities and other interests until the final Equity Payment is made. The System consists of certain water and wastewater utility facilities in western Travis and Hays Counties, Texas, including retail distribution and collection facilities, and the facilities that LCRA had used to serve TCMUD 12 and other wholesale customers under the Water Services Agreements. LCRA and WTCPUA agreed to use their best efforts to obtain TCEQ approval for the transfer of LCRA's CCN No. 11670 to WTCPUA. TCMUD 12's Wholesale Water Services Agreement with LCRA was designated as an "intangible asset" in the Installment Purchase Agreement, and the parties acknowledged that WTCPUA would have to obtain TCMUD 12's Consent to transfer that Agreement (Required Consent).

18. LCRA and WTCPUA requested TCMUD 12 to consent to LCRA's transfer and WTCPUA's assumption of the operations and maintenance responsibilities under the Wholesale Water Services Agreement. In June 2012, LCRA, WTCPUA and TCMUD 12 entered into an Agreement Regarding Transfer of Operations of the West Travis County Water System from LCRA to WTCPUA (Transfer Agreement), made retroactively effective to March 19, 2012, the date on which WTCPUA assumed operational control of the West Travis County System. In the Transfer Agreement, LCRA assigned to the WTCPUA all obligations and duties of the LCRA under the Water Services Agreement related to operation and maintenance of the System and the delivery of wholesale water service. The parties acknowledged that WTCPUA had paid all connection fees required by the Wholesale Water Services Agreement, and WTCPUA consented to the transfer of the Paid Connection Fees to WTCPUA. TCMUD 12 consented to LCRA's delegation to WTCPUA the authority to collect Connection Fees and to set and collect the Monthly Charges and Volume Rates, in strict accordance with the terms of the Wholesale Water Services Agreement.
19. In accordance with the Wholesale Water Services Agreement, WTCPUA diverts from Lake Austin in Travis County, Texas, the raw water TCMUD 12 purchases from LCRA under the Raw Water Contract and transports, treats, and delivers potable water to TCMUD 12, in that same county.
20. On March 19, 2012, after assuming operational control of the West Travis County System, WTCPUA's Board adopted by Order, the wholesale monthly charges and volumetric rates 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 Volume Rate was \$2.40 per 1,000 gallons.
21. On November 1, 2012, WTCPUA issued an Order that changed the Connection Fee charged to TCMUD 12 (the "Highway 71 Water Impact Fee") by increasing it from \$4,120 per LUE to \$5,992 per LUE.

22. On November 15, 2012, the WTCPUA Board of Directors adopted an Order effective January 1, 2013, increasing all wholesale water rates, including those charged to TCMUD 12, by 15.5%, which was one-half the rate increase for wholesale customers recommended by WTCPUA's rate analyst and was characterized by WTCPUA as a phased or stepped increase. Specifically, WTCPUA increased TCMUD 12's Monthly Charge from \$9,430 to \$10,891.65 and the Volume Rate from \$2.40 to \$2.77 per 1,000 gallons (the "Prior Rate"). The 2014 Volume Rate, \$2.77 per 1,000 gallons, was the same for all wholesale customers who, like TCMUD 12, had their own Raw Water contract with LCRA.
23. WTCPUA's 2013 wholesale rate change was not protested by TCMUD 12 or any other wholesale customer. After adopting the 15.5% increase to wholesale rates, the WTCPUA Board directed its staff to continue reviewing wholesale rates to identify a methodology that would address the remaining needed increase in wholesale rates for 2014.
24. WTCPUA's rate analyst, undertook a cost of service analysis in order to identify the wholesale rates to be charged in 2014, and by May 2013 had identified a new rate methodology to set 2014 Monthly Charges and Volume Rates for all wholesale customers. WTCPUA also identified significant changes to the terms of each customer's wholesale water service contracts that would need to be made to conform the contracts to the new methodology, and drafted a standard Contract Amendment offer that reflected that new methodology.
25. On November 21, 2013, the WTCPUA Board of Directors adopted an Order changing the wholesale water rates charged to its 13 wholesale water customers, including TCMUD 12, effective January 1, 2014 (Protested Rates). Under the Rate Order, TCMUD 12's Monthly Charge was \$8,140.89 and its Volume Rate was \$2.11 per 1,000 gallons.
26. On December 17, 2013, WTCPUA provided notice to TCMUD 12 of its November 21, 2013 decision to revise the wholesale water rates.
27. 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).
28. On April 28, 2014, TCEQ referred the case to State Office of Administrative Hearings (SOAH) for hearing and issued a notice of a preliminary hearing.
29. 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. Jurisdiction under Texas Water Code §§ 11.036 and 11.041 remains with TCEQ.

30. 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.
31. TCMUD 12 Petition alleged that the Protested Rate adversely affects the public interest because it evidences WTCPUA's abuse of monopoly power based upon the following factors: (1) WTCPUA's disparately greater bargaining power than TCMUD 12; and (2) WTCPUA changed the computation of the revenue requirement and rate from one methodology to another.
32. 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 services.
33. The following are the parties in this case:

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

34. 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 filed 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 following transfer of petition to 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
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 filed
August 3, 2015	Reply Briefs filed; evidentiary record closed

WTCPUA is a Monopoly

35. Retail public utilities are by definition monopolies in the areas they serve. Tex. Water Code § 13.001(b)(1). As a retail public utility, WTCPUA is a monopoly.
36. WTCPUA is a monopoly for the additional reason that it holds a dominant position in the market in which it serves and has the ability to control prices and quantities associated with the provision of wholesale water services to TCMUD 12.
37. WTCPUA is a monopoly for the additional reason that it exercises exclusive control over the provision of wholesale water services to the TCMUD 12 service area.
38. WTCPUA is presently the only provider of services related to the diversion, treatment, and delivery of water, i.e., wholesale water services, within the retail water service area of The Highlands.
39. WTCPUA is a monopoly, as evidenced by significant barriers to entry. If a new supplier could easily enter the market, then WTCPUA would have less control over the supply of the good or service, and less control over prices because of the threat of competition. Ease of entry and exit makes the market contestable, and any attempt to change a price or the quantity of the good or service supplied could invite competition, which would diminish control by WTCPUA.
40. There are no other existing suppliers of wholesale water services with the capacity and infrastructure necessary to provide an alternative to the wholesale water services and system controlled by WTCPUA. Extensive resources would be necessary to allow a new entity to enter this market and operate an entire water system to serve The Highlands, including: facilities to divert raw water out of the lake, which in turn would require a new intake structure (barge), a new transmission line from the intake structure to the location of a new Water Treatment Plant ("WTP"), a site for a new WTP, additional new transmission lines from the new WTP to a new point of delivery (POD), the construction of the new POD, and sufficient storage to ensure appropriate pressurization in The Highlands. The investment necessary to construct these facilities create a barrier to entry preventing a new supplier from easily entering the market and therefore WTCPUA's control over the supply of the good or service is not threatened by competition.
41. The absence of a competitive threat to WTCPUA's control is also ensured, or at least substantially enhanced, by WTCPUA's contract with its three Participants, the City of Bee Cave, Hays County and TCMUD No. 5. The Participants are contractually obligated, under the Acquisition, Water Supply, Wastewater Treatment and Conditional Purchase Agreement to prohibit competition. Under the same Participants' Acquisition Agreement, the three Participants are also prohibited from reselling water that they purchase from WTCPUA to third party wholesalers without obtaining consent of WTCPUA and the other Water Participants; and the Water Participants are prohibited

from entering into contracts with any entity other than WTCPUA for supply of water during the term of the Acquisition Agreement. These contractual provisions ensure there are formidable barriers to entry by any third party alternative wholesale water service provider.

42. Section 3.01.b. of TCMUD 12's Wholesale Water Services Agreement requires it to use the potable water obtained from WTCPUA before it can use potable water from any other source. This contractual provision secures WTCPUA's control over the supply of wholesale water services that TCMUD 12 must have to serve The Highlands. Section 3.03.c. of TCMUD 12's Wholesale Water Services Agreement contains additional contractual prohibitions on TCMUD 12 obtaining wholesale water services from any source other than WTCPUA.

Seller's Disparate Bargaining Power

43. Bargaining power refers to the relative ability of parties to exert influence over each other and in a competitive market where there are many viable suppliers and many buyers, there is equal bargaining power. However, where there is a monopoly or a dominant firm, there is disparate bargaining power, with the supplier holding more power.
44. The Preamble to the original Public Interest rules, which have now been adopted by the Commission, establishes that the public interest is invoked when the facts demonstrate that the seller "exercises near monopoly power over the purchaser because many agreements allow the seller the unilateral right to adjust the rate [and] the purchaser substantially has no alternatives to obtain water service because it has entered into a long term agreement with the seller." The Wholesale Water Services Agreement, a 40 year contract with more than 30 years remaining, provides WTCPUA with the unilateral right to change the Monthly Charge and Volume Rate, as confirmed by the Transfer Agreement.
45. WTCPUA's abuse of monopoly power is reflected in its "disparate bargaining power," specifically "including the purchaser's alternative means, alternative costs, . . . and problems of obtaining alternative water . . . service." The focus of the disparate bargaining power analysis under this part of the rule is whether WTCPUA's order adopting the Protested Rates evidence abuse of monopoly power because there was not a reasonable alternative existing in 2013 that would have permitted TCMUD 12 to obtain wholesale water service elsewhere.

Options, Costs and Problems in Obtaining Alternative Water Service

46. The provisions of Article III of the Wholesale Water Services Agreement that govern the relationship between TCMUD 12 and WTCPUA, contractually prohibit TCMUD 12 from obtaining wholesale water services from any entity other than WTCPUA, unless and until TCMUD 12 reaches the maximum quantity of water as provided for in its Raw Water contract and the Wholesale Water Services Agreement. TCMUD 12's demand for

potable water to serve The Highlands is nowhere near the maximum quantity of either raw water or potable water it is entitled to receive under those contracts from LCRA and WTCPUA, respectively.

47. WTCPUA's offer of a contract amendment as a means by which TCMUD 12 could reduce its Monthly Charge was intended to reduce WTCPUA's obligations under the Wholesale Water Services Agreement, and deprive TCMUD 12 of the wholesale water services capacity it contracted for in 2009. TCMUD 12's refusal to accept the contract amendment left the parties' relative bargaining power unchanged –WTCPUA still has a monopoly in provisioning of wholesale water services which allows it to control the supply and price of wholesale water service to TCMUD 12 until 2048.
48. WTCPUA's Contract Amendment offer was also intended to incorporate the new methodology for establishing Wholesale Monthly Charge and Volume Rate by deleting provisions of the Wholesale Water Services Agreement and replacing them with the new methodology. TCMUD 12 did not accept WTCPUA's contract amendment offer but the new methodology reflected in the Contract Amendment offer is the same new method used by WTCPUA to set TCMUD 12's Protested Rates. Imposing a new methodology for computing the Monthly Charge and Volume Rate that is inconsistent with the provisions of the Wholesale Water Services Agreement, in spite of TCMUD 12's refusal to accept the contract amendment, evidences WTCPUA's disparate bargaining power.
49. The standard Contract Amendment offered by WTCPUA would have lowered TCMUD 12's Monthly Charge only by reducing the Districts' Maximum Day Reservation under the Wholesale Water Services Agreement, which would have unreasonably required the young and growing districts, to relinquish water rights during the worst drought in the history of Texas. TCMUD 12 needs the capacity it contracted for to be able to provide potable water to The Highlands as that development grows, and the offer by WTCPUA to reduce the quantity of water does not represent an opportunity of value to TCMUD 12 and does not indicate a change to WTCPUA's market power. If TCMUD 12 had accepted the offer to reduce its maximum capacity, WTCPUA would not have been obligated to agree in the future to provide additional capacity up to the current levels if TCMUD 12 needed it to satisfy the growing development at The Highlands.
50. Had TCMUD 12 accepted WTCPUA's offer to voluntarily reduce the Max Day reservation in the contract amendment, TCMUD 12's \$1.5 million investment in capacity in the West Travis County Water System would have been at least partially stranded.
51. TCMUD 12 did not have at any time since 2009 when it entered into the Wholesale Water Services Agreement with LCRA, and still does not have, an existing water system that would allow it to abandon the WTCPUA system and continue to obtain potable water to serve its retail customers.

52. Building its own facilities to transport and treat the raw water it purchases from LCRA, and deliver the potable water to its retail customers was not and is not a viable, reasonable alternative available to TCMUD 12. TCMUD 12 was not in 2013–14 (at the time that WTCPUA changed and implemented the Protested Rates) and is still not in any position to finance or shoulder the cost for alternative water service facilities. The Highlands' (TCMUD 11, 12 & 13's) tax base is so small that it could not support a bond issuance of the size that would be needed to construct a water service system to replace the services provided by WTCPUA under the contract.
53. The reasonable estimates of the cost for TCMUD 12 to construct a new raw water intake barge, transmission line, 4.0 MGD treatment plant, and delivery line necessary to provide water service to The Highlands, ranges from \$14.146 million to \$25.52 million.
54. TCMUD 12 would not have been able to issue bonds in 2008–09 to fund the construction of its own WTP because it had no tax base to support issuance of bonds. Bonds recently issued by TCMUD 12 and 13 are not available to fund a new water services system, and if they were, their combined total would not be sufficient to enable TCMUD 12 to fund the construction of a new water services system to replace the services received from WTCPUA.
55. The extensive resources that would be necessary to allow any new entity, including TCMUD 12, to enter this market and operate an entire water system to serve The Highlands, include the following: facilities to divert raw water out of the lake, which in turn would require a new intake structure (barge), a new transmission line from the intake structure to the location of a new Water Treatment Plant ("WTP"), a site for a new WTP, additional new transmission lines from the new WTP to a new point of delivery (POD); the construction of the new POD; and storage sufficient to ensure proper pressure was available for customers in The Highlands. If there was an alternative supplier who could construct all of those facilities, then TCMUD 12 would have to re-design the internal water system to get the water from the POD to The Highlands. These extensive resources are a problem to obtaining an alternative water service, which further demonstrates WTCPUA's disparate bargaining power.
56. Neither the City of Austin, Lakeway MUD or Hays County MUD could provide wholesale water service to The Highlands, and they are not alternatives available to TCMUD 12.
57. 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 could find an alternative supplier of wholesale water service. There is no evidence that a market exists for the connection-fee rights that TCMUD 12 has in the WTCPUA system.

Other Factors of WTCPUA's Disparate Bargaining Power

58. The Transfer Agreement did not allow WTCPUA to change the Connection Fee charged to TCMUD 12, and WTCPUA's decision in November 2012 increasing the Connection Fee from \$4,120 to \$5,992 per LUE therefore demonstrates its disparate bargaining power over TCMUD 12.
59. The offered Contract Amendment was created by WTCPUA to reflect the new methodology for establishing the Protested Rates, by deleting provisions of the original Wholesale Water Services Agreement and replacing or adding provisions that set out the new methodology. Even though TCMUD 12 did not accept the contract amendment, the new methodology was imposed upon TCMUD 12 through the 2014 Protested Rates.
60. WTCPUA's meetings of wholesale customers at which the WTCPUA's rate analyst discussed a new methodology for establishing the 2014 wholesale water rates is not evidence that TCMUD 12 had a meaningful opportunity to provide input before WTCPUA implemented the Protested Rates. Holding a meeting does not equate with making any concessions or modifications based upon the feedback given by the wholesale customers and WTCPUA decided on the new rate methodology early in the process and that methodology did not change – regardless of the number of meetings it held.
61. Based on the foregoing, WTCPUA exercised disparately greater bargaining power in setting the Protested Rates, which constitutes an abuse of monopoly power.

Methodologies for Computation of Revenue Requirement and Rates

62. P.U.C. SUBST. R. § 24.133(a)(3)(C) provides that the Commission may consider if the seller changed the computation of the revenue requirement or rate from one methodology to another, in determining if the seller abused monopoly power. The term "methodology" in P.U.C. SUBST. R. § 24.133(a)(3)(C) is not defined in the Commission's rule. The Commission adopts an interpretation of 24.133(a)(3)(C) that allows it to examine changes to formulas, allocation factors, and rate design, including changes in methodologies contained in the parties' contract, to show that the seller has changed the computation methodology for the revenue requirement or the rate.
63. P.U.C. SUBST. R. § 24.133(b) prohibits the commission from determining whether the protested rate adversely affects the public interest based on an analysis of WTCPUA's cost of service. The *prohibition* on conducting a cost of service analysis in the public interest hearing excludes only that evidence that calculates what the seller's cost of service is or should have been. The Commission will not determine if the protested rate adversely affects the public interest because it does not equal the seller's cost of providing service but will consider any methodology used to compute the revenue requirement or rate to set the Protested Rate.

64. These findings allows the Commission to give effect to both P.U.C. SUBST. R. §§ 24.133(a)(3)(C) and 24.133(b).
65. WTCPUA's methodology for computing the wholesale revenue requirement for the Monthly Charge and Volume Rate changed, based upon the following:
- a. The Wholesale Water Services Agreement establishes the computation methodology for the rates to be charged under the Agreement, including the Monthly Charge and the Volume Rate;
 - b. The Prior Rates were established by increasing the Monthly Charge and Volume Rates established under the Agreement by 15.5%;
 - c. WTCPUA adopted a new computation methodology for the Monthly Charge and Volume Rate, and memorialized the new computation methodology is a standard Contract Amendment that expressly deletes and replaces provisions in the Wholesale Water Services Agreement, reflecting the significant scope of the computational methodology changes;
 - d. TCMUD 12 did not accept WTCPUA's proposed contract amendment but the methodology stated in that amendment is the new methodology that WTCPUA utilized to compute the Protested Rates; and
 - e. WTCPUA calculated TCMUD 12's Monthly Charge and Volume Rate using the new computation methodology rather than the computation methodology established by the Wholesale Water Services Agreement.
66. WTCPUA 2014 Wholesale Rates were based upon a new methodology, under which the wholesale customers' Monthly Charge will escalate annually. WTCPUA's new methodology is not subject to amendment except for instances where WTCPUA refunds its bonds.
67. WTCPUA changed the computation of the revenue requirement and rate from one methodology to another in setting the Protested Rates, which evidences WTCPUA's abuse of monopoly power.

II. CONCLUSIONS OF LAW

Jurisdiction

1. TCMUD 12 initiated an appeal of WTCPUA's decision affecting the amount paid for water service within 90 days after the date TCMUD 12 received notice of the decision. The Commission has jurisdiction over TCMUD 12's petition pursuant to TEX. WATER CODE § 13.043(f).
2. WTCPUA and TCMUD 12 are each a retail public utility under TEX. WATER CODE §§ 13.002 (19) and (21).

3. WTCPUA is a monopoly. TEX. WATER CODE § 13.001(b)(1).
4. WTCPUA's decision affecting the amount paid for water service is a "rate," under TEX. WATER CODE § 13.002(17), which is a broadly defined term that includes the new methodology WTCPUA adopted to determine the Protested Rates.
5. WTCPUA's use of a new methodology for establishing the revenue requirement and rates constitutes a rate change that is appealable under TEX. WATER CODE § 13.043(f).
6. The wholesale water services provided by WTCPUA to TCMUD 12 is a "service" provided by a "retail public utility", as those terms are defined in TEX. WATER CODE §§ 13.002(19) and 13.002(21).

Burden Of Proof

7. TCMUD 12 has the burden of proving that the Protested Rates are adverse to the public interest. 16 TAC § 24.136.

Requirement for an Initial Public Interest Determination

8. 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).
9. If the Commission determines the protested rate adversely affects the public interest, the Commission will remand the matter to SOAH for further evidentiary proceedings on the rate, and the remand order is not a final order subject to judicial review. 16 Tex. Admin. Code § 24.134(b).
10. The Commission's Public Interest Rule includes relevant criteria that must be weighed in determining if a protested rate adversely affects the public interest. P.U.C. SUBST. R §24.133.
11. One of the four criteria, the violation of which requires a finding that the protested rate adversely affects the public interest, is whether the seller abused monopoly power. P.U.C. SUBST. R § 24.133(a)(3).
12. WTCPUA is a monopoly. TEX. WATER CODE § 13.001(b)(1).
13. Factors to be considered in determining if the seller has abused monopoly power, relevant to this case, include: 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 the seller changed the computation of the revenue requirement or rate from one methodology to another. P.U.C. SUBST. R. § 24.133 (a)(3)(A) and (C).

14. Courts construe administrative rules, which have the same force as statutes, in the same manner as statutes. *Rodriguez v Service Lloyds Ins. Co.*, 997 S.W.2d 248, 254 (Tex. 1999), *See Lewis v. Jacksonville Bldg. & Loan Ass'n*, 540 S.W.2d 307, 310 (Tex. 1976). Statutory construction requires courts to avoid a construction that creates a redundancy or renders a provision meaningless. *Williams v. Tex. State Bd. of Orthotics & Prosthetics*, 150 S.W.3d. 563, 573 (Tex. App.-Austin 2004, no pet.). The Commission's interpretation of P.U.C. SUBST. R. 24.133(a)(3)(C) and 24.133(b) ensures that neither rule is rendered meaningless.
15. WTCPUA has disparately greater bargaining power, because TCMUD 12 has no alternative means to obtain alternative wholesale water services, the cost of an alternative is unreasonable, and TCMUD 12 has no ability to finance the construction of the significant infrastructure that would be necessary to provide for itself an alternative water system, all of which evidences WTCPUA abused its monopoly power. P.U.C. SUBST. R. 24.133(a)(3)(A)
16. WTCPUA changed its methodology for computing its revenue requirement and rates which evidences its abuse of monopoly power in its provision of wholesale water service to TCMUD 12.
17. The Protested Rates, including the new methodology utilized by WTCPUA in setting the Protested Rates, adversely affects the public interest.
18. This matter will be remanded to the State Office of Administrative Hearings for further evidentiary proceedings on WTCPUA's wholesale water rates.

Ordering Paragraphs

In accordance with the above Findings of Fact and Conclusions of Law, the Commission issues the following Order:

1. TCMUD 12's Petition is granted to the extent provided in this Order and the Protested Rates established by WTCPUA are adverse to the Public Interest.
2. This matter is remanded to SOAH for further evidentiary proceedings on the rate.
3. This remand order is not a final order subject to judicial review.

4. No later than 90 days after this matter is remanded to SOAH for an evidentiary hearing on the rate, WTCPUA shall file with the Commission a cost of service study and other information which supports the Protested Rate.
5. All other motions, requests for entry of specific findings of fact and/or conclusions of law, and other requests for general or specific relief, if not expressly granted, are denied.