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

**BEE CAVE'S RESPONSES TO EXCEPTIONS FILED BY OTHER PARTIES
REGARDING THE PROPOSAL FOR DECISION**

To The Honorable Public Utility Commission of Texas:

COMES NOW, the City of Bee Cave, Texas ("Bee Cave"), and files these Responses to Exceptions Filed by Other Parties to the Proposal For Decision in this matter.

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ARGUMENT IN SUPPORT OF RESPONSES TO EXCEPTIONS

VIII. ALLEGED ABUSE OF MONOPOLY POWER

A. Bargaining Power of the Parties

2. Other Bargaining Power Factors

c. WTCPUA Did Provide Meaningful Opportunity For Input Before Protested Rates Implemented

e. CONCLUSION: WTCPUA Did Not Exercise Disparate Bargaining Power In Setting The Protested Rates

As noted in the Proposal for Decision ("PFD"), the facts show that a committee of the wholesale customers proposed an allocation of debt, operations, and maintenance costs in the monthly charge. [See Proposed Finding of Fact 53] The PUA accepted this proposal. It ultimately formed the basis for the monthly charge in the protested rates. It is unclear how agreeable the PUA must be in order for MUD 12 to conclude that the opportunity for input was meaningful. But the give-and-take process for negotiating rates cannot fairly be characterized as abusive if the PUA accepted input that found its way into the new rates.

B. Methodologies for Computation of Revenue Requirement and Rates

- 1. Alleged Change In Revenue-Requirement Computation Methodology**
- 2. Computation Methodology And Cost-of-Service Analysis**
- 3. Evidence Does Not Show WTCPUA Changed Its Revenue Requirement Computation Methodology**

The methodology issue arguably presents an issue of first impression for this Commission. A great deal of effort is expended by the parties attempting to define "methodology" for the purposes of the public interest rule. MUD 12 argues that rates were originally established using a "contractual" methodology. But the contractual provisions quoted by MUD 12 in its Exceptions

direct the PUA and its predecessors to set "just and reasonable" rates. MUD 12 also argues that the preamble to the original adoption of the public interest rule by the Texas Water Commission made clear that it was not necessary that the rates for wholesale customers equal the cost of providing them service. Based upon those premises, MUD 12 invites this Commission to take an approach that might involve broadening the interpretation of the word "methodology" as it is used in the public interest rule.

MUD 12 provides its analysis as an example of what it believes this Commission should do when evaluating the methodology question as an element of determining whether the public interest would be served by remanding the case for a full-blown rate case. However, the rule is clear that this phase of the hearing procedure should not venture into the world of "cost of service" analysis. Although MUD 12 has tried to say otherwise, its analysis is indeed a cost of service analysis. So much of the testimony of MUD 12's witness Joyce is a complaint about changes in the allocations of cost of service between retail and wholesale customers. Even if one accepts MUD 12's description of the original rate setting process as contractual methodology, it is also a cost of service analysis.

MUD 12's approach presents the possibility of an apparent contradiction within the rule itself.

As MUD 12 has pointed out, the Commission is charged with interpreting the rule in a manner that makes all of its provisions meaningful, and must interpret the rule in order to give effect to all of them. Thus, it is not permissible to allow a cost of service analysis, even by any other name, in this phase of the hearing procedure. The determination of whether a change of methodology has occurred must necessarily involve a definition of methodology that does not embrace the use of a cost of service analysis.

Bee Cave believes that this approach "splits hairs too fine," as the saying goes. The operative definition for the word "methodology" in this context must necessarily be informed

by the purpose of the bifurcated procedure. It is to assure that every wholesale case filed with the Commission would not necessarily end up becoming a full-blown rate proceeding. To allow that too easily embraces (or ignores) the risk of converting the Commission's jurisdiction over wholesale rates into something that is virtually the same as the Commission's jurisdiction over retail rates. As the rule, and its underlying statute, are currently written, this is a contrary result. The purpose of this phase of the bifurcated procedure is to stand as a gatekeeper, only allowing those cases that present a real possibility of abuse of monopoly power to be further evaluated in a full-blown rate case to ensure that the rates set by the wholesale utility are in fact "just and reasonable."

The necessary underpinning of the analysis at this stage of the proceedings must be to discern whether the behavior of the wholesale utility leads to a reasonable conclusion that it has abused monopoly power.

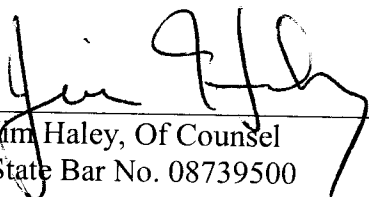
C. Evidence Does Not Show That WTCPUA Is a Monopoly or Has Abused Any Monopoly Power It Might Have

Whether or not the Commission decides that the PUA is a monopoly, the evidence of record does not support a conclusion that the PUA has abused monopolistic power, or any other power. The PUA has been open and straightforward about the purpose and methodology underlying the protested rates. The PUA conducted a series of meetings, most of which MUD 12 attended. As noted earlier, a committee of the wholesale customers proposed an allocation of debt, operations, and maintenance costs in the monthly charge. The PUA accepted this proposal. It ultimately formed the basis for the monthly charge in the protested rates. This is not the abuse of a monopoly. Although the PUA did not satisfy MUD 12's preferences, the PUA was not abusive toward MD 12 or any other wholesale customer.

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

When one steps back and looks at the whole process, the PUA methodology for setting the protested rates is actually pretty standard. MUD 12 is unhappy with certain allocations and other aspects of the rate calculation that are identified in a cost of service analysis, but its complaints do not identify the kind of abuse that the Commission's wholesale rate jurisdiction is intended to prevent. If this approach is utilized to assess the rate setting "methodology" underlying the protested rates, then Petitioner has not met its burden in this phase of the proceedings, its petition should be denied and the Proposal for Decision should be adopted.

Respectfully submitted,



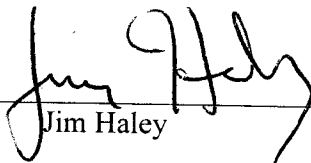
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**ATTORNEYS FOR THE
CITY OF BEE CAVE**

CERTIFICATE OF SERVICE

I certify that a copy of this document has been served on all parties of record on October 22, 2015, in accordance with P.U.C. Procedural Rule 2.74.



Jim Haley