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

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PUBLIC UTILITY COMMISSION  
FILING CLERK

PETITION OF TRAVIS COUNTY  
MUNICIPAL UTILITY DISTRICT  
NO. 12 APPEALING CHANGE OF  
WHOLESALE WATER RATES  
IMPLEMENTED BY WEST TRAVIS  
COUNTY PUBLIC UTILITY AGENCY;  
CITY OF BEE CAVE, TEXAS; HAYS  
COUNTY, TEXAS; AND WEST TRAVIS  
COUNTY MUNICIPAL UTILITY  
DISTRICT NO. 5

§ PUBLIC UTILITY COMMISSION  
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### ORDER

This Order addresses the petition by Travis County Municipal District 12 (District 12), on behalf of itself and Travis County Municipal Districts 11 and 13, seeking review of wholesale water-treatment-service rates set by the West Travis County Public Utility Agency (the Agency) that became effective on January 1, 2014.

On September 30, 2015, the State Office of Administrative Hearings (SOAH) administrative law judge (ALJ) issued a proposal for decision recommending that the Commission deny and dismiss with prejudice to refiling District 12's petition regarding the Agency's changed rates.<sup>1</sup> The SOAH ALJ recommends dismissal based on findings of fact and conclusions of law that District 12 failed to show the protested rates adversely affect the public interest. In particular, District 12 failed to show the protested rates evidence the Agency's abuse of monopoly power.<sup>2</sup>

The Commission adopts the SOAH ALJ's recommended findings of fact and conclusions of law with minor modifications. First, the Commission accepts the SOAH ALJ's recommendation to correct finding of fact 68 to remove reference to declining-block rate structures. Second, the Commission adopts new finding of fact 70A. to find, consistent with the

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<sup>1</sup> Proposal for Decision (PFD) at 63, conclusion of law 13 (Sep. 30, 2015)

<sup>2</sup> PFD at 1, 12, 52.

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the SOAH ALJ's recommendations, that the Agency used the same method to compute its revenue requirement for its prior rates and the protested rates. Additionally, the Commission declines to address in this proceeding whether the Agency is a retail public utility. Addressing such is not necessary because this case involves rates for the provision of wholesale service by a political subdivision of the state.<sup>3</sup> Finally, the Commission makes other, non-substantive changes for flow and stylistic consistency.

The Public Utility Commission of Texas (Commission) adopts the following findings of fact and conclusions of law:

### **I. Findings of fact**

1. Travis County Municipal Utility District No. 12 (District 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 (Districts 11 and 13) are also conservation and reclamation districts.
3. Districts 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. Districts 11, 12, and 13 provide retail water service to geographically distinct areas within a larger area in Travis County, Texas, known as "The Highlands." District 11 also serves an adjacent area, known as "Rough Hollow."
5. On September 25, 2008, District 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 District 12 for municipal use by Districts 11, 12, and 13 within their service areas.

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<sup>3</sup> Texas Water Code § 13.043(f).

6. In October 2009, District 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 District 12 had purchased from LCRA under the raw water contract and to deliver that treated water to District 12 at a specified delivery point.
7. In the water services agreement, District 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 Districts 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 District 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 District 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 District 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 (the Agency) 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. The Agency 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, the Agency diverts from Lake Austin in Travis County, Texas, raw water District 12 purchases from LCRA under the raw water contract and transports, treats, and delivers the treated water to District 12, in that same county.
16. In January 2012, LCRA and the Agency entered into a utilities installment purchase agreement by which LCRA sold to the Agency 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 District 12 under the water services agreement.
17. In June 2012, LCRA, District 12, and the Agency 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 Agency all obligations and duties of the LCRA under the water services agreement, the Agency assumed those obligations and duties, and the Agency consented to the assignment and assumption.
18. On March 19, 2012, after assuming operational control of the West Travis County System, the Agency adopted the monthly charge and volumetric rate that LCRA had charged, including the rates charged to District 12 (initial rates). Accordingly, the Agency's initial monthly charge to District 12 was \$9,430 and its volumetric rate was \$2.40 per 1,000 gallons.
19. On November 15, 2012, the Agency's board of directors adopted an order increasing its wholesale water treatment service rates, including those charged to District 12, by 15.5% effective January 2013 (prior rates). Specifically, the prior rates increased District 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. District 12 did not appeal the prior rates.

21. On November 21, 2013, the Agency's board of directors adopted an order revising the wholesale water treatment service rates charged to District 12, effective January 1, 2014 (protested rates). As compared to the prior rates, the protested rates decreased District 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, District 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, District 12 amended its petition to withdraw its claim of jurisdiction under §§ 11.036 and 11.041.
27. District 12 claims that, by adopting the protested rates, the Agency has and abused monopoly power because: (1) the Agency has disparately greater bargaining power than District 12; and (2) the Agency changed its methodologies used to compute the protested rates and the revenue requirement underlying them to the long-term disadvantage of District 12.
28. Based on the alleged abuse of monopoly power, District 12 also contends that the protested rates adversely affect the public interest.
29. District 12, on behalf of itself and Districts 11 and 13, asks the Commission 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 Districts 11, 12, and 13 should pay the Agency for wholesale-water-treatment service.

30. The following are the parties in this case:

<b>PARTY</b>	<b>REPRESENTATIVE</b>
Districts 11, 12, and 13 (collectively, District 12)	Kay Trostle & Miguel Huerta
The Agency	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
Commission 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:

<b>DATE</b>	<b>EVENT</b>
March 6, 2014	District 12's petition filed with TCEQ
April 11, 2014	The Agency 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	District 12 Motion Amending Jurisdictional Claim & ED's Motion to Withdraw
September 18, 2014	SOAH Order 4 – Memorializing Prehearing Conference, 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	District 12's Interim Appeal of SOAH Order No. 6
October 17, 2014	The Agency Response to District 12's Interim Appeal of SOAH Order No. 6
October 31, 2014	District 12's direct case evidence filed

DATE	EVENT
November 5, 2014	SOAH Order 9 – Ruling on Motions to Determine Sufficiency and Motion to Compel
November 24, 2014	PUC Order Granting District 12's Appeal of SOAH Order No. 6
December 19, 2014	The Agency Direct Testimony Filed
February 6, 2015	Commission Staff Direct Testimony Filed
March 6, 2015	Discovery on District 12 direct case ends
March 6, 2015	The Agency Motion for Partial Summary Decision
March 18, 2015	District 12 Response to the Agency Motion for Partial Summary Decision
March 18, 2015	Staff Response to the Agency Motion for Partial Summary Decision
March 24, 2015	District 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 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. Districts 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 District 12 to serve itself and Districts 11 and 13.
34. District 12 is free under the water services agreement to reduce the quantity of treatment services it receives from the Agency and serve itself.
35. The evidence does not show that District 12 has or had alternatives available for obtaining water treatment service for itself and Districts 11 and 13 other than self-service and service from LCRA and subsequently the Agency.



36. Under the water services agreement, District 12 is entitled to receive treatment from the Agency for a maximum flow of 3,980,000 gallons per day (gpd) of water, which is District 12's maximum reserved capacity in the Agency's system.
37. In a December 17, 2013 notice of the protested rates, the Agency offered to allow District 12 to amend its contract to reduce its maximum reserved capacity in the Agency's West Travis County Facilities.
38. If District 12 had accepted the offer and reduced its maximum reserved capacity, that would have reduced the monthly charge District 12 pays under the protested rates and adopted the rate calculation formula underlying the protested rates.
39. The Agency similarly offered to allow its 13 other wholesale customers to amend their contracts to change their maximum reserved treatment capacity. As of December 19, 2014, approximately one year after the Agency 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. The Agency's offer to amend the water services agreement to allow District 12 to reduce its reserved capacity in the Agency's system was sincere and the Agency has left the offer open.
41. The Agency could not compel District 12 to take the offer, and District 12 chose not to take the Agency's offer to reduce its reserved capacity in the Agency system.
42. Under the water services agreement, the Agency is obligated to provide District 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 District 12 is entitled to have treated under the water services agreement.

43. District 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. District 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. District 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 Agency system was and is an alternative available to District 12.
47. District 12 has paid \$1.5 million in connection fees to LCRA. Under the transfer agreement, LCRA transferred the collected fees to the Agency, and District 12 is entitled to full credit for them.
48. There is no evidence that a market exists for the connection-fee rights that District 12 has in the Agency system.
49. The \$1.5 million that District 12 paid to connect to the West Travis County System is a sunk cost that could be partially or wholly stranded if District 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 District 12 is prohibitively more expensive than service from the Agency under the protested rates.

**Other Bargaining Power Factors**

51. Before May 2013, the Agency hosted six meetings with its wholesale customers to obtain their input on the Agency's allocation of its costs. A District 12 representative attended four of the six meetings.
52. Also, before the rates were adopted, the Agency's representatives met with District 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 the Agency'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 Agency board on November 21, 2013.
54. No one for District 12 attended the board meeting to protest the adoption of the protested rates.
55. The Agency gave District 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 District 12 was searching for a wholesale water treatment service provider, which gave District 12 significant bargaining power when negotiating with LCRA.
57. For some period after 2009, LCRA, and later the Agency, would have had unused treatment capacity if District 12 had stopped purchasing water treatment service from them. Again, this gave District 12 significant bargaining power.
58. LCRA never raised the rates to which District 12 had agreed in October 2009.
59. After District 12 agreed in June 2012 to the transfer of LCRA's rights and obligations under the water services agreement to the Agency, the Agency initially kept the same rates LCRA had charged.
60. The Agency raised the rates by 15.5% in November 2012, but District 12 did not appeal that increase.

61. The evidence does not show that District 12 had significantly less bargaining power than: (1) LCRA in October 2009 when LCRA and District 12 entered into the water services agreement; (2) the Agency in June 2012 when District 12, the Agency, and LCRA entered into the transfer agreement; or (3) the Agency in November 2013 when the Agency 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. The Agency 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, the Agency 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 District 12. However, the volumetric rate per 1,000 gallons that the Agency charges District 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.A. The Commission’s rules refer to several possible rate structures, including 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. The Agency used the same rate structure for both the prior rates and the protested rates it has charged District 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.
- 70.A. The Agency used the same methodology to compute its revenue requirement for the prior rates and the protested rates.
71. The evidence does not show that the Agency changed its rate computation methodology when it adopted the protested rates.

**Evidence Does Not Show That the Agency Has Abused Monopoly Power**

72. The evidence does not show that there is a barrier to District 12’s entry into the field to provide itself with water treatment service. Accordingly, the Agency does not exercise sole control over the market for water treatment services.
73. District 12 failed to prove that building its own facilities to serve itself was or is prohibitively expensive.

74. The protested rates about which District 12 complains are actually lower than the prior rates it paid the Agency. District 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 District 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.
76. The Agency's lowering of the protested rates indicates it has not abused any power it might have over District 12.

**Transcript**

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

**II. Conclusions of Law**

**Jurisdiction**

1. The Commission has jurisdiction over District 12's petition. Tex. Water Code §§ 13.002 (21), (25), and 13.043(f).

**Burden Of Proof**

2. District 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 rates do 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 (the 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. The Agency used the cash-needs method for both the prior rates and protested rates.
8. The Agency used the same methodology to compute both the prior rates and protested rates: a monthly fee and a flat volumetric rate.
9. District 12 failed to prove that the Agency has, or LCRA previously had, disparately greater bargaining power than District 12.
10. District 12 failed to prove that the Agency changed its methodology for computing its revenue requirement or rates when it adopted the protested rates.
11. District 12 failed to prove that the Agency had, much less abused, monopoly power when it adopted the protested rates.
12. District 12 failed to prove that the protested rates adversely affect the public interest.
13. District 12's petition appealing the protested rates the Agency 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. District 12's request that each party to this case, with the exception of Commission Staff, be allocated an equal share of the transcription costs should be denied.

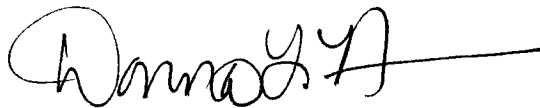
### III. Ordering Paragraphs

In accordance with the above findings of fact and conclusions of law, the Commission issues the following Orders:

1. District 12's petition to review the wholesale water rates implemented by the Agency is denied and dismissed with prejudice to refiling.
2. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.
3. The effective date of this order is the effective date the Order is final, as provided by Texas Government Code § 2001.144.

SIGNED AT AUSTIN, TEXAS the 20<sup>th</sup> day of November 2015

#### PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER