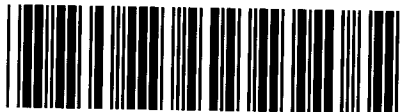




Control Number: 42866



Item Number: 183

Addendum StartPage: 0

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

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

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BEFORE THE

PUBLIC UTILITY COMMISSION

OF TEXAS

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TCMUD 12'S MOTION FOR REHEARING

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

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

TCMUD 12’S MOTION FOR REHEARING

TO THE HONORABLE CHAIRMAN AND COMMISSIONERS:

I. INTRODUCTION

Pursuant to Section 2001.146 of the Texas Administrative Procedure Act, as amended,¹ TCMUD 12, Petitioner in this Docket, timely files this Motion for Rehearing of the Commission’s Order within 25 days of the date the Order was signed and dated, November 20, 2015 and would respectfully urge rehearing based upon the following five Points of Error:

II. POINT OF ERROR NUMBER ONE

The Commission erred in refusing to find that the Agency is a “retail public utility” which caused it to err in concluding the Agency is not a monopoly and therefore that the Agency could not have abused monopoly power. These erroneous findings and conclusions formed the basis for erroneously concluding that TCMUD 12’s Petition should be denied. The findings of fact, conclusions of law and evidentiary and legal rulings claimed to be erroneous under this Point of Error include: Order at 2; Conclusions of Law (“COL”) 1, 11, 12 and 13; Findings of Fact (“FOF”) 13, 15 – 18; and Ordering Paragraph 1.

¹ Act of March 11, 2015, 84th R.S., ch. 625, § 9, sec. 2001.146(a), 2015 Tex. Gen. Laws (to be codified at Tex. Gov’t Code §2001.146(a)).

The Agency is a retail public utility for purposes of Subchapter C of Chapter 13 of the TEX. WATER CODE, and specifically TEX. WATER CODE § 13.043(f), because it is a “political subdivision of the state of Texas”² that is operating facilities to provide potable water service³ for compensation,⁴ which conforms with the definition of “retail public utility” in TEX. WATER CODE § 13.002(19). The Commission’s legal error rests on the mistaken assumption that the Agency cannot be a “retail public utility” because the Agency is supplying “wholesale water service” to TCMUD 12.⁵ However, nothing in TEX. WATER CODE § 13.002(19) exempts the Agency from the definition as a retail public utility because it supplies wholesale water service.

The statutory term “retail public utility” must be understood in the context of the statute by comparing it to the definition of “public utility.” A “retail public utility” includes political subdivisions of the state such as the Agency, as well as municipal corporations and water supply and sewer service corporations, which are expressly excluded from the statutory definition of “public utilities.”⁶ The Commission has appellate jurisdiction over “retail public utilities” under Texas Water Code §13.043. The Agency is a retail public utility under the statutory definition because it is a “political subdivision” (under Texas Local Government Code § 572.061(d))⁷ “operating, maintaining and controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.”⁸

The Commission’s rationale for refusing to address this issue because it involves a wholesale water service rate,⁹ ignores the fact that all cases arising under TEX. WATER CODE §

² See, Order FOF 13.

³ See, Order FOF 15 – 18.

⁴ See, Order FOF 18, 19, 21.

⁵ See, Order at 2 (“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.” Citing to Texas Water Code § 13.043(f).)

⁶ TEX. WATER CODE § 13.002(23) (emphasis added): “ ‘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,* * * * 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 . . . ”

⁷ See, Order FOF 13.

⁸ TEX. WATER CODE § 13.002(19).

⁹ See, Order at 2.

13.043(f) involve rates for wholesale service. It is therefore legal error for the Commission to fail to find the Agency is a retail public utility while accepting jurisdiction pursuant to TEX. WATER CODE § 13.043 (f).

The term “service” in the definition of “retail public utility” is defined in TEX. WATER CODE § 13.002(21), and expressly includes providing water to “other retail public utilities.” The term “wholesale water service”¹⁰ is not found in the definition of “retail public utility,” nor is the term “retail water service.” The Commission errs by refusing to properly apply the statutory definition of retail public utility to the Agency, and by instead finding that the term “wholesale water service” establishes a basis for its refusal to find the Agency is a retail public utility. The Commission’s error is highlighted in its Jurisdictional Conclusion of Law¹¹ where it cites to the definition of “wholesale water service” but fails to cite to the definition of “retail public utility” even though TCMUD 12 is a retail public utility and *therefore* invoked the Commission’s jurisdiction under TEX. WATER CODE § 13.043 (f).

The Commission’s failure to define the Agency as a retail public utility under the statute leads it to the erroneous conclusion that the Agency is not a monopoly.¹² Pursuant to TEX. WATER CODE § 13.001(b)(1) “retail public utilities are by definition monopolies in the areas they serve.” TEX. WATER CODE § 13.001 establishes that the purpose of Chapter 13 is to establish a comprehensive regulatory system to regulate retail public utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the retail public utilities. It is undisputed that the area served by the Agency includes the area to which TCMUD 12 provides service, which is referred to as The Highlands.¹³ The Commission therefore errs in concluding in this case, which arises under TEX. WATER CODE § 13.043(f), that the Agency is not a monopoly in the areas in which it serves pursuant to TEX. WATER CODE § 13.001(b)(1).

¹⁰ TEX. WATER CODE § 13.002(25).

¹¹ Order COL 1 (citing TEX. WATER CODE § 13.002(21) (definition of “Service”) and (25) (definition of Wholesale Water Service).

¹² See, Order COL 11.

¹³ see, Order FOF 4. The “area served” by the Agency was originally LCRA’s “service area” as depicted in the Wholesale Water Services Agreement, Exhibit B, defined as the West Travis County Regional Water System. It is now referred to as the PUA Water Service Area. See, TCMUD 12 Exhibit No. 3 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 at JAD Exhibit 8, page 13 of 124.

Because the Commission errs in finding the Agency is not a monopoly, it erroneously concludes that the Agency did not have monopoly power and therefore did not abuse monopoly power under 16 TEX. ADMIN. CODE § 24.133(a)(3).¹⁴ These errors prejudice TCMUD 12's substantial rights because they caused the Commission to deny TCMUD 12's Petition based on errors of law and they are arbitrary, capricious and characterized by abuse of discretion.

III. POINT OF ERROR NUMBER TWO

The Commission erred in concluding that the Agency did not change its methodology for computing its revenue requirement when it adopted the protested rates, a factor under 16 TEX. ADMIN. CODE § 24.133(a)(3)(C), which caused the Commission to erroneously conclude that the Agency did not abuse monopoly power and that the protested rates did not adversely affect the public interest. These errors formed the basis for the Commission reaching the ultimate erroneous conclusion that TCMUD 12's petition should be denied. The findings of fact, conclusions of law and evidentiary and legal rulings claimed to be erroneous under this Point of Error include: Order at FOF 21, 38, 53, 62-65 and 70A; COL 6, 7, 10, 11, 12, and 13; and Ordering Paragraph 1.

P.U.C. SUBST. R. 24.133(a)(3)(C) requires the Commission, in determining if the protested rate evidences the seller's abuse of monopoly power, to weigh all relevant factors, including "the seller changed the computation of the revenue requirement or rate from one methodology to another." In this Point of Error Number Two, TCMUD 12 addresses the errors in the Commission Order related to changes to the computation of the *revenue requirement* methodology and in Point of Error Number Three, TCMUD 12 addresses the errors in the Commission's Order related to the seller's change to the computation of the *rate* methodology.

The Commission errs in the first instance by finding that there are only two "approaches for establishing a utility's revenue requirement: the cash-needs approach and the utility-basis approach."¹⁵ While the Findings of Fact in the Order do not state that these "approaches" are "computation methodologies," the term used in the rule, presumably these are the Findings that

¹⁴ Order COL 11.

¹⁵ Order FOF 63-64.

form the basis for the Commission's ultimate findings that the Agency used the same methodology for computing the revenue requirement¹⁶ in the prior rates and the protested rates.¹⁷

The term "cash or utility basis" is found in P.U.C. SUBST. R. 24.135(b) but not in P.U.C. SUBST. R. 24.133(a)(3)(C). The difference in use of terms in these two rules demonstrates that the Commission chose to qualify the word "methodology" to only the cash or utility basis in 24.135(b) but not in 24.133(a)(3)(C). In the Order, by interpreting the term "methodology" in 24.133(a)(3)(C) as meaning only cash or utility basis the Commission errs because those limiting words are not found in the rule. In applying its own rule, the Commission must give effect to the terms used, and not read into the rule terms *not* used.¹⁸ P.U.C. SUBST. R. 24.133(a)(3)(C) does not have the same limiting language found in P.U.C. SUBST. R. 24.135(b) and it is error for the Commission to "read into" 24.133(a)(3)(C) words limiting that rule so that it means the only change in methodology that it will consider as abuse of monopoly power is a change between cash and utility basis. The effect of this interpretation is that the Public Interest rule is cabined to only those situations in which the seller changes between the cash basis and the utility basis, which ignores the fact that switching between cash and utility basis would be *highly* unusual.¹⁹

The Commission errs in the second instance by failing to reconcile its finding to reach the only reasonable conclusion, which is that the revenue requirement computational methodology changed from the method reflected in the existing contract to the method used in setting the protested rates as described in the "contract amendment." The ALJ discussed in the PFD two other revenue requirement computational methodologies, including phased and contractual,²⁰ but then concluded that there was no evidence of either of those revenue requirement methodologies. This conclusion is in error with respect to the contractual methodologies, and that error is carried over to the Order. The Order includes findings that the Wholesale Water Services Agreement describes the methodology for computing the revenue requirement methodology for the

¹⁶ Order at FOF 65.

¹⁷ Order at FOF 70A.

¹⁸ *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.).

¹⁹ See, Preamble - WTCPUA Ex. 76 at 6230, first column. Traditionally, non-profit utilities use the cash basis and investor-owned utilities use the utility basis so a switch between the two methodologies would be very unlikely.

²⁰ PFD at 33-34.

connection fee, monthly charge and volumetric rate,²¹ which means these are contractual revenue requirement computational methodologies. The Order also correctly finds that there is a new rate calculation formula underlying the protested rate described in an offered contract amendment.²² The Commission errs however by failing to find the contract amendment formula is a changed computation methodology used to determine the revenue requirement in setting the protested rate.

The revenue requirement computation methodology discussed in FOF 9 summarizes the method for setting the Monthly Charge under TCMUD 12's Wholesale Water Services Agreement.²³ The entire Monthly Charge contractual methodology is shown on Attachment A to this Motion for Rehearing. The "rate calculation formula underlying the protested rates" discussed in FOF 38, is reflected in numerous executed and form *contract* amendments that are in evidence.²⁴ The Monthly Charge revenue requirement contractual methodology from the contract amendment that underlies the Protested Rate is also shown on Attachment A to this Motion for Rehearing. A comparison of the change to the methodology for computing the revenue requirement for the Volume Rate²⁵ is also shown on Attachment A.²⁶ From these findings,²⁷ the only reasonable conclusion to be reached is that the calculation of the revenue requirement used to set the Protested Rate was based on a different or changed methodology from that found in the existing contract. The Commission therefore errs in concluding that the Agency did not change its methodology for computing its revenue requirement or rates when it adopted the protested rates.²⁸

The ALJ's rejection of the evidence presented under P.U.C. SUBST. R. 24.133(a)(3)(C) is based on an expansive interpretation of P.U.C. SUBST. R. 24.133(b), which is the rule that

²¹ Order FOF 7-10

²² Order FOF 38.

²³ TCMUD 12 Exhibit No. 1 at JAD Exhibit 4, Section 4.01.d.

²⁴ WTCPUA Ex. 1, Attachment Q; TCMUD 12 Exhibit Nos. 7, 10, 13, 16, 18, and 20.

²⁵ See, Order FOF 10.

²⁶ As reflected on Attachment A, the 2014 Volume Rate includes, for the first time, a "raw water surcharge fee" ([LCRA Raw Water cost per Thousand Gallons/(1-.10 water loss)]/10.) The Wholesale Water Services Agreement, utilized to set the Prior Volumetric Rate, explicitly states that TCMUD 12's Volume Rate shall not include any charges for either raw water or for lost water on the Agency's (formerly LCRA's) side of the meter.

²⁷ Order FOF 9, 10 and 38.

²⁸ Order COL 10.

prohibits determining if the protested rate adversely affects the public interest based on *an analysis of the seller's cost of service*. (Referred to hereinafter as the “cost of service prohibition” rule.) As a result of the ALJ’s expansive interpretation of the cost of service prohibition rule, the ALJ rejected the extensive, persuasive evidence of the Agency’s changes to the methodology for computing the revenue requirement and rate methodology in setting the protested rates. The Commission’s third error occurred in accepting the ALJ’s *broad* interpretation of P.U.C. SUBST. R. 24.133(b), and the ALJ’s *narrow* interpretation of P.U.C. SUBST. R. 24.133(a)(3)(C) because taken together, those interpretations render the change of methodology rule meaningless. As Commissioner Anderson noted during the November 5, 2015 Oral Argument on this matter, there appears to be a circularity problem in reconciling the two rules.

Statutory construction requires courts to avoid a construction that creates a redundancy or renders a provision meaningless.²⁹ The TNRCC’s Preamble from the original adoption of these rules explains (twice) that the “analysis of the seller’s cost of service” refers to comparing the Protested Rate to *the rate that should have been set* based on the seller’s cost of service to determine whether the public interest has been violated. TCMUD 12 made no such argument and presented no evidence of what the Agency’s monthly charge and volumetric rate should have been. Instead, evidence concerning the Agency’s method of computing the revenue requirement and/or rates presented by TCMUD 12 demonstrates that the seller changed the computation of the revenue requirement and rate methodology by changing the allocation formulas and the contractual methods in setting the Protested Rates.³⁰ The Order includes findings that the Agency adopted a “rate calculation formula” and an allocation of debt and O&M costs in setting the protested rates³¹ but it errs in failing to treat the new formula and allocation factors as changes to the computation methodology for the revenue requirement and the rates.

The Commission also erred by accepting the ALJ’s dismissal of the statements by the Agency’s General Manager, Financial Manager and Rate Analyst, and General Counsel that the Agency changed the computation methodology for the revenue requirement and the rates in setting the Protested Rates. Attachment B to this Motion for Rehearing are excerpts from the

²⁹ *Williams v. Tex. State Bd. of Orthotics & Prosthetics*, 150 S.W.3d. 563, 573 (Tex. App.-Austin 2004, no pet.).

³⁰ P.U.C. SUBST. R. 24.133 (a)(3)(C)

³¹ Order at FOF 38 and 53.

evidentiary record that demonstrate the reliable and probative evidence in the record as a whole supports finding that the Agency not only changed, but also characterized its actions as changing, the methodology for calculating the revenue requirement and the rates. The ALJ rejected this evidence as a “casual reference”³² which compounded the error of giving no weight to the evidence of the changes to the methodology for calculating the Agency’s revenue requirement, which included changes to allocation factors and new contractual formulas. By adopting the ALJ’s proposed findings of fact and conclusions of law that omit this evidence, the Commission’s Order is arbitrary, capricious and characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The Commission errs in concluding that because the cash-needs methodology was used in setting the Agency’s prior and protested rates, the Agency did not change its methodology for computing its revenue requirement when it adopted the protested rates. These erroneous conclusions result in the Commission erroneously concluding that the Agency did not have monopoly power and therefore did not abuse monopoly power under 16 TEX. ADMIN. CODE § 24.133(a)(3) and that the protested rates do not adversely affect the public interest.³³ These errors prejudice TCMUD 12’s substantial rights because they caused the Commission to deny TCMUD 12’s Petition which is (1) in violation of a constitutional or statutory provision; (2) in excess of the Commission’s statutory authority; (3) made through unlawful procedure; (4) affected by other errors of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (6) arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

IV. POINT OF ERROR NUMBER THREE

The Commission erred in concluding that the Agency did not change its methodology for computing its rates when it adopted the protested rates, which caused the Commission to erroneously conclude that the Agency did not abuse monopoly power and that the protested rates did not adversely affect the public interest. These errors caused the Commission to reach the ultimate erroneous conclusion that TCMUD 12’s petition should be denied. The findings of fact,

³² PFD at 38.

³³ Order COL 11 and 12.

conclusions of law and evidentiary and legal rulings claimed to be erroneous under this Point of Error include: Order at FOF 21, 38, 67-70 and 71; COL 8, 10, 11, 12, and 13; Ordering Paragraph 1.

The Commission errs by ultimately finding that the Protested Rates consist of a Monthly Charge and a flat Volume Rate, the Agency used the “same rate structure” in the prior and protested rates.³⁴ and therefore the Agency did not change its rate computation methodology.³⁵ The first error occurs due to the limited nature of Finding of Fact 68A, which explains that other rate structures could include inclining block and phased or multi-step volumetric rates. This Finding addresses only volumetric rate structures, and does not address monthly charge rate structures. There are no findings that address rate structures for monthly charges. Therefore, there are no underlying findings to support the ultimate finding that the methodology for calculating the monthly charge was not changed, which is implicit in the ultimate finding that the rate computation methodology for the “protested rates” did not change. The absence of any findings to address the different rate structures for monthly charges that might support a finding of change of rate methodology under the ALJ’s analysis, is understandable because water utilities always charge customers a monthly charge, usually to recover fixed costs, and a volume charge, usually to recover variable costs.

The second error is therefore that the interpretation that limits the evidence that the Commission will consider in determining if a “rate computation methodology” was changed, to these two rate structures, i.e., if the prior and protested rates include a Monthly Charge and a flat Volume Rate, the methodology has not “changed.” This interpretation effectively eviscerates the rule and renders it impossible for a wholesale buyer to successfully challenge the methodology for computing the rate to prove the seller abused monopoly power.

In addition to the change to the methodology for computing the Volume Rate reflected in Attachment A hereto, the Volume Rate charged by the Agency to each wholesale water services customer in 2013 was exactly the same, but under the new methodology for computing the Volume Rate, each wholesale customer is now charged differing Volume Rates, as found in the Order at FOF 66. The ALJ dismissed this difference among the wholesale customers’

³⁴ Order FOF 70.

³⁵ Order FOF 71.

volumetric rates as reflective of their separate contracts. That analysis is unreasonable and should be rejected because all the wholesale customers had separate contracts in 2013 when they were each charged identical Volume Rates. The only reasonable ultimate finding is that the new different rates resulted from a change to the calculation of the Volume Rate methodology, not as a result of the wholesale customers' separate contracts.

The Commission errs in relying on its finding that the wholesale rate structure, which included a monthly charge and flat volumetric rate, was used in setting the Agency's prior and protested rates, to reach the erroneous ultimate finding that the Agency did not change its methodology for computing its rates when it adopted the protested rates. These erroneous findings result in the Commission erroneously concluding that the Agency did not abuse monopoly power under 16 TEX. ADMIN. CODE § 24.133(a)(3) and that the protested rates do not adversely affect the public interest.³⁶ These errors prejudice TCMUD 12's substantial rights because they caused the Commission to deny TCMUD 12's Petition which is (1) in violation of a constitutional or statutory provision; (2) in excess of the Commission's statutory authority; (3) made through unlawful procedure; (4) affected by other errors of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (6) arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

V. POINT OF ERROR NUMBER FOUR

The Commission erred in concluding that neither the Agency nor LCRA had disparately greater bargaining power than TCMUD 12, a factor to be considered under P.U.C. SUBST. R. 24.133(a)(3)(A); and that error caused the Commission to erroneously conclude that the Agency did not abuse monopoly power and that the protested rates did not adversely affect the public interest. These errors formed the basis for the Commission reaching the ultimate erroneous conclusion that TCMUD 12's petition should be denied. The findings of fact, conclusions of law and evidentiary and legal rulings claimed to be erroneous under this Point of Error include:

³⁶ Order COL 11 and 12.

Order at FOF 32-34, a portion of FOF 35,³⁷ 36-50, 55 – 57, 61, 72, 73; COL 9, 11, 12, 13; and Ordering Paragraph 1.

The evidence relevant to TCMUD 12's claim that the Agency has disparate bargaining power which evidences abuse of monopoly power includes the lack of any alternative means, alternative costs, and other problems in obtaining alternative wholesale water service.³⁸ The ALJ found and the Commission agreed that the only alternative water treatment (sic) service available to TCMUD 12 was to construct and operate its own facilities to deliver potable water to the Districts' customers in The Highlands. The ALJ found and the Commission adopted FOF 35 that correctly states that there are no other alternatives other than the Agency.

The initial problem with the conclusion that TCMUD 12 could self-serve, is the ALJ's failure to consistently address and incorporate into the Findings adopted by the Commission, the fact that the service obtained by TCMUD 12 from the Agency is "wholesale water service" not just "water treatment." The Wholesale Water Services Agreement defines "wholesale water service" as "the diversion of raw water from the Colorado River, the transmission of the raw water to a place or places of treatment, the treatment of the water into potable form and the transmission of the potable water to the Delivery Point."³⁹ It is therefore erroneous to refer to the services provided by the Agency and the alternative services and facilities discussed as evidence of disparate bargaining power as only "water treatment" service, facilities or capacity.⁴⁰ This error colored the ALJ's analysis and causes the Findings and Conclusions adopted by the Commission to be erroneous.

The next error occurs due to an unreasonable leap in logic -- from a finding that TCMUD 12 is statutorily authorized to construct and operate water treatment (sic) facilities,⁴¹ to findings that TCMUD 12 can build and operate those facilities as an alternative to continuing to take

³⁷ The Commission errs in finding in FOF 35 that district 12 could self-service itself and Districts 11 and 13. The remainder of FOF 35 correctly finds that the evidence does not show that District 12 has or had alternatives available for obtaining water treatment (sic) service for itself and Districts 11 and 13 other than service from LCRA and subsequently the Agency.

³⁸ P.U.C. SUBST. R. 24.133(a)(3)(A).

³⁹ TCMUD 12 Exhibit 1 at JAD Exhibit 4, p. 6.

⁴⁰ FOF 21, 32, 34, 35, 36, 39, 42, 46, 49, 56, and 57.

⁴¹ Order FOF 32.

service from the Agency.⁴² The ALJ arbitrarily failed to mention the extensive, un-contradicted evidence that TCMUD 12 could not have obtained financing for such an undertaking;⁴³ or that the replacement facilities, and hence the cost would include not only a “treatment” facility but also a new barge and raw water intake structure on the barge, diversion facilities to get the raw water out of the lake, a transmission line from the lake to a new water treatment plant, construction of a new water treatment plant, a new distribution system within The Highlands to account for a new point of delivery (presumably in a different pressure plane) for delivery of potable water to retail customers, and the construction of new storage facilities. While the Order correctly finds that TCMUD 12’s prepaid connection fees of \$1.5 million could be stranded if TCMUD 12 was forced to construct its own water system to replace the wholesale water service provided by the Agency,⁴⁴ the Order arbitrarily ignores that finding in deciding that the cost of a new alternative self-service system would be reasonable. The cost of a new system, coupled with the loss of \$1.5 million, and the inability to finance a new system, make self-service a non-viable alternative to continuing to take wholesale water service under the contract with the Agency, and the Commission errs in concluding otherwise.⁴⁵

The Order also errs in finding that the Wholesale Water Services Agreement does not bar TCMUD 12 from self-serving.⁴⁶ This finding rests on an erroneous interpretation of the parties’ Wholesale Water Services Agreement. That Agreement requires TCMUD 12 to use the potable water obtained from WTCPUA before it can use potable water from any other source:

⁴² Order FOF 33 and 35.

⁴³ TCMUD 12 has an authorized maximum allowable bond issuance amount of approximately \$84 million. Tr. at 32; 589 – 591; 623-626 (DiQuinzio Cross and Redirect). But that “authorized maximum allowable bond issuance” does not mean TCMUD 12 could have built its own WTP and associated facilities in 2009 or in 2013/14. First, the Districts’ current ability to issue bonds is best represented by the \$5.7 million of combined bonds that Districts 12 and 13 recently issued (Tr. 83), which is well below the cost of a new water services system for The Highlands. Second, under the Water Code, the combined tax rate in Travis County may not exceed \$1.20, and the Districts have adopted a combined tax rate limit of \$0.7725 for both O&M and debt service. (Tr. 625) Therefore, TCMUD 12 could not have issued bonds to pay for a \$25.52 million water system because the resulting tax rate would have been \$8/\$100 assessed value; and if the new water system cost *only* \$13.5 million, TCMUD 12 could not have issued that amount of debt either because the resulting tax rate would have been \$4.78/\$100. Both of those tax rates which would have greatly exceeded the Travis County allowable rate by a considerable amount. (Tr. 625–626.)

⁴⁴ Order FOF 47 – 49.

⁴⁵ Order FOF 72-73.

⁴⁶ Order FOF 34

Section 3.01.b. The Raw Water Contract currently provides for the reservation and/or purchase of 1,680 acre-feet per year of raw water. It shall be District No. 12's sole responsibility to secure any amendments to the Raw Water Contract necessary in order for District No. 12 to purchase any additional raw water required for full development of the District Service Area. *Water made available under the Raw Water Contract and provided through the Wholesale Water Services provided by LCRA pursuant to this Agreement will be used by the Districts in order to provide potable water service within the District Service Area prior to the use of potable water obtained from any other source.*⁴⁷

This contractual provision secures WTCPUA's control over the supply of wholesale water services that TCMUD 12 must have to serve The Highlands and that control supports a finding that the Agency has disparate bargaining power and is a monopoly.

The ALJ accepted the Agency's argument that its offer to let TCMUD 12 reduce its contractual maximum capacity⁴⁸ evidenced TCMUD possessed bargaining power. But that simplistic analysis fails to consider that: (1) TCMUD 12 contracted for the maximum expected capacity it would need to fully develop The Highlands and had no need or desire to reduce the amount of water the Agency is obligated to provide to The Highlands, especially since (a) reducing its maximum reserved capacity could strand TCMUD 12's \$1.5 million investment in the PUA's System, and (b) there was no guarantee that the Agency would agree to increase the capacity for TCMUD 12 as water demands for The Highlands continued to grow; and (2) the offered contract amendment would have required TCMUD 12 to "adopt the rate calculation formula underlying the protested rates"⁴⁹ and that methodology results in an extremely unfavorable escalating monthly charge that is based on the wholesale customer's hypothetical projected usage and that methodology was not intended to be subject to amendment.

Ultimately, the ALJ erred by conducting what amounted to a prudence review of TCMUD 12's decision in 2009 to sign a 40 year contract with LCRA to obtain wholesale water service. That is an arbitrary and capricious approach to determining if the Agency had disparate power and if TCMUD 12 had a reasonable alternative to continuing under its contract with the Agency in 2013-14 when the Agency adopted and began charging the protested rates.

⁴⁷ TCMUD 12 Exhibit No. 1 (DiQuinzio Direct) at JAD Exhibit 4, Section 3.01.b.(emphasis added).

⁴⁸ Order FOF 37.

⁴⁹ Order FOF 38.

Instead of speculating about what TCMUD 12 might or should have done in 2009 instead of signing a contract with LCRA and speculating about the relative bargaining power of LCRA at that time,⁵⁰ the analysis under the disparate bargaining power provision of the rule must focus on the parties' relative bargaining power *at the time* the Agency changed the rates. An analysis of the parties' relative bargaining power at the time of the rate change would show that:

(1) if TCMUD 12 had agreed to drastically reduce its maximum reserved capacity under the wholesale water service agreement, that amendment would have been to the benefit of the Agency by relieving WTCPUA of its contractual obligation to provide wholesale water services up to a daily flow rate of 3.98 MGD, which would have meant WTCPUA would be free to either reduce its cost of operations for that amount of service or to use that freed-up capacity to increase service to and revenues from its retail customers; at the same time, it would have potentially stranded at least some of TCMUD 12's prepaid investment in the System, and would have put TCMUD 12 at the mercy of the Agency to serve the growth of The Highlands;

(2) notwithstanding TCMUD 12's refusal to agree to the contract amendment, the Agency imposed on TCMUD 12 the rate calculation formula set out in the offered contract amendment, secure in the knowledge that the Wholesale Water Services Agreement required TCMUD 12 to use and pay for the potable water obtained from WTCPUA before it can use potable water from any other source; and

(3) There was no other *existing* provider of wholesale water service from whom TCMUD 12 could have obtained wholesale water service, and even if TCMUD 12 could have financed the construction of a new system to self-serve, it could not have constructed and operated its own system immediately, and therefore would still have had to continue taking service from the Agency.

A reasonable analysis of the evidence relevant to the parties' relative bargaining power at the time the controversy arose demonstrates that the Agency has disparately greater bargaining power that evidences abuse of monopoly power, and the ALJ's hind-sight prudence analysis of the evidence should be rejected and upon rehearing, the Commission should issue an order granting TCMUD 12's Petition.

⁵⁰ Order FOF 57.

The analysis that resulted in each of the erroneous findings discussed in Point of Error Number Four resulted in the Commission erroneously concluding that the Agency did not exercise disparately greater bargaining power and therefore did not abuse monopoly power under 16 TEX. ADMIN. CODE § 24.133(a)(3) and that the protested rates do not adversely affect the public interest.⁵¹ These errors prejudice TCMUD 12's substantial rights because they caused the Commission to deny TCMUD 12's Petition which is (1) in violation of a constitutional or statutory provision; (2) in excess of the Commission's statutory authority; (3) made through unlawful procedure; (4) affected by other errors of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (6) arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

VI. POINT OF ERROR NUMBER FIVE

The Commission erred in concluding that the Agency did not abuse its monopoly power based on findings that the monthly charge and volumetric rate which are protested by TCMUD 12 were lower than the prior monthly charge and volume rate. This rationale for finding no abuse of monopoly power rests on a misunderstanding or misinterpretation of TEX. WATER CODE § 13.043(f) and P.U.C. SUBST. R. 24.133. The statute and rule require the Commission to consider if the protested rate is adverse to the public interest, which is not and should not be limited to consideration of rate changes that reflect only rate increases. The definition of rate is purposefully broad and means not only the compensation or charge demanded by a retail public utility, but also the rules, regulations, practices and contracts affecting that compensation.⁵² The findings of fact, conclusions of law and evidentiary and legal rulings claimed to be erroneous under this Point of Error include: Order FOF 21, 38, 74 – 76; COL 11 – 13; and Ordering Paragraph 1; and failure to consider TCMUD 12's Offer of Proof that TCMUD 12 made as a result of the ALJ's erroneous evidentiary ruling striking a portion of TCMUD 12's Rebuttal Testimony as "speculation."

⁵¹ Order COL 11 and 12.

⁵² TEX. WATER CODE § 13.002(17).

The first error is evident in the ultimate finding that the Agency's lowering of the rates indicates it has not abused any power it might have over District 12,⁵³ which is consistent with the ALJ's analysis in the PFD,⁵⁴ but is not unsupported by citation to statute, rule or precedent. In addition, neither PUC SUBST. R. 24.133 nor the Preamble to the original agency's adoption of these rules contain any language that supports the conclusion reflected in the Order that a *decreased or lower* rate prevents a finding that the seller abused its monopoly power.

The second error arises from the failure to apply the statutory definition of "rate" to the facts of this case. "Rate" is broadly defined and requires that the analysis of whether the Protested Rate evidences abuse of monopoly power include an analysis of the rules, regulations, practices and contracts that affect the compensation. It is undisputed that the methodology used to calculate the rate – assuming *arguendo* it was not a changed methodology – is designed to backload the Agency's debt, will result in steeply increasing monthly charges for TCMUD 12, and in order to provide assurance to the Agency's bond issuers, that methodology is not subject to amendment, unless the Agency refunds bonds. That rate methodology is the reason TCMUD 12 initiated this appeal; and that methodology which changes the formula in the wholesale water services agreement, evidences the Agency's disparately greater bargaining power and abuse of monopoly power.

The third error stems from the Commission's failure to overrule the ALJ's erroneous evidentiary ruling striking the prefiled rebuttal testimony of Mr. DiQuinzio (TCMUD 12 Exhibit 4 at p. 17, lines 6-8) as "speculative."⁵⁵ The prefiled testimony that was erroneously struck described the 2015 Monthly Rate that the Agency began charging to TCMUD 12 in March 2015, utilizing the same methodology adopted by the Agency beginning with the 2014 Protested Monthly rate. Because TCMUD 12 made an Offer of Proof that included the evidence struck by the ALJ,⁵⁶ the Commission may consider that evidence on rehearing. The ALJ erred in sustaining the Agency's objection that this testimony was "speculation" because the testimony was filed after the effective date of the 2015 rate, and was therefore based on the Agency's actual

⁵³ Order FOF 76.

⁵⁴ PFD at 50.

⁵⁵ See, SOAH Order No. 16 Ruling on Objections to Prefiled Rebuttal Evidence (Apr. 17, 2015) The following objections by PUA to prefiled rebuttal evidence of TCMUD 12 are sustained and the evidence is struck: * * *(at p. 4)"PUA's speculation objections . . . Page 16, lines 5, through page 17, line 16."

⁵⁶ See, Transcript page 634.

charges and cannot legally be characterized as “speculation.”⁵⁷ The evidentiary ruling should therefore be overruled, and the Commission should properly consider the following evidence: the “rate calculation formula underlying the protested rates”⁵⁸ resulted in TCMUD 12 paying a Monthly Rate, effective March 1, 2015, of \$13,328.35, which is \$5,000 higher than the 2014 protested monthly rate, and approximately \$2500 higher than the monthly rate charged by the Agency in 2013.

The rulings and findings discussed in this Point of Error Number Five resulted in the Commission erroneously concluding that lower rates cannot support a finding of abuse of monopoly power under 16 TEX. ADMIN. CODE § 24.133(a)(3) and that the protested rates do not adversely affect the public interest.⁵⁹ These errors prejudice TCMUD 12’s substantial rights because they caused the Commission to deny TCMUD 12’s Petition which is (1) in violation of a constitutional or statutory provision; (2) in excess of the Commission’s statutory authority; (3) made through unlawful procedure; (4) affected by other errors of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (6) arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

⁵⁷ The testimony was not offered in an attempt to invoke the commission’s jurisdiction to examine the March 2015 rate, and therefore the ruling to exclude it would not have been proper had the objection been lack of relevance.

⁵⁸ The quoted language is from FOF 38.

⁵⁹ Order COL 11 and 12.

WHEREFORE, PREMISES CONSIDERED, TCMUD 12 moves that this Motion for Rehearing be granted and that its Petition be granted finding the Agency abused its monopoly power, that the protested rates adversely affect the public interest, and that this matter be remanded to the SOAH 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

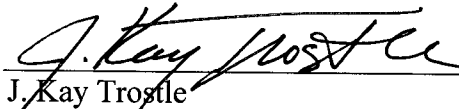
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ktrostle@smithtrostle.com

By:



J. Kay Trostle

State Bar No. 20238300

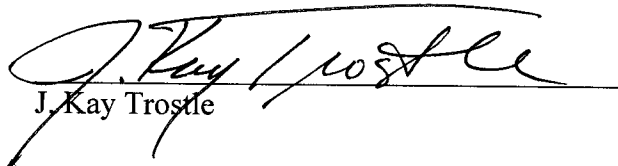
Miguel A. Huerta

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 December, 2015, a true and correct copy of the above and foregoing document is being served via U.S. mail certified, return receipt requested, 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>$\{ \text{Annual Allocated Debt Service Payment} + (25\% \text{ times coverage} * \text{Annual Allocated Debt Service Payment}) - (\text{Effective Impact Fee Credit} * \text{Annual Debt Service Payment}) \} / 12 \text{ months.}$</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

9

WTCPUA00003913

West Travis County Public Utility Agency
FY2014 Wholesale Customer Minimum Bill Analysis

Schedule B

Lazy Nine 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	Scheduled	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	\$ 6,718,332
2016	\$ 6,718,332	\$ 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	\$ 345,687	\$ 7,376,406	\$ 255,308	\$ 7,121,099
2019	\$ 7,121,099	\$ 348,086	\$ 7,469,185	\$ 308,497	\$ 7,160,608
2020	\$ 7,160,608	\$ 349,937	\$ 7,510,546	\$ 361,686	\$ 7,148,860
2021	\$ 7,148,860	\$ 349,383	\$ 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	\$ 261,080	\$ 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)

WTCPUA00003914

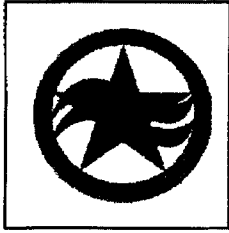
**PUC DOCKET NO. 42866
SOAH DOCKET NO. 473-14-5144.WS**

**TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12'S
MOTION FOR REHEARING ATTACHMENT B**

Page	Item
Page 2	TCMUD 12 Exhibit No. 5 (Joyce Rebuttal) at JJJ Exhibit R6: Memorandum from Don Rauscher to the WTCPUA Board of Directors on March 31, 2013, (Attachment p. 3).
Page 5	TCMUD 12 Exhibit No.5 (Joyce Rebuttal) at JJJ Exhibit R7: Memorandum from Don Rauscher to the WTCPUA Board of Directors on May 19, 2013, (Attachment p. 8).
Page 10	TCMUD 12 Exhibit No.5 (Joyce Rebuttal) at JJJ Exhibit R9: Letter from Water Resources Management, LLC to WTCPUA Board President Larry Fox dated March 12, 2013, (Attachment pgs. 12, 13, 18). See, especially, Handout Page 18: “This proposed methodology is a change from the utilized method of assessing minimum bills to wholesale customers.”
Page 22	TCMUD 12 Exhibit No.5 (Joyce Rebuttal) at JJJ Exhibit R8: Memorandum from Lauren Kalisek to the WTCPUA Board of Directors on June 6, 2013, (Attachment p. 23).
Page 25	WTCPUA Exhibit No.1 (Rauscher Direct): Attachment Q (Resolution and Form Amendment), (Attachment p. 26).

TCMUD 12 Exhibit No.5 (Joyce Rebuttal) at JJJ Exhibit R6:

**Memorandum from Don Rauschuber to the
WTCPUA Board of Directors on March 31, 2013, pg. 1.**

**WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY**

12117 Bee Cave Road
 Building 3, Suite 120
 Bee Cave, Texas 78738
 Office: 512/263-0100
 Fax: 512/263-2289
www.wtcpua.org

MEMORANDUM

TO: Board of Directors
FROM: Don Rauschuber, General Manager
DATE: March 31, 2013
RE: Discussion Items for General Manager's Report

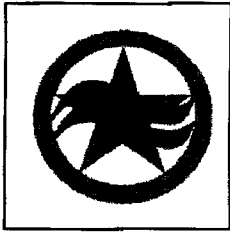
Please be advised that the following items will be discussed at the April 4, 2013 Board of Directors meeting under the General Manager's Report.

1. WTCPUA Water and Wastewater Operational Matters
 - a. Water Supply and Treatment
 - i. STES Preventative Maintenance Program
 - ii. Raw Water Pump 5 Controller Out
 - iii. SW Parkway Pump 1 Wiring Failure Repaired
 - b. Wastewater Collection and Treatment
 - i. No Known Odor Complaints Related to Lake Pointe WWTP Operations
 - ii. The Wallace Group Draft Report on LPWWTP
2. Meetings Since March 21, 2012 Board Meeting
 - a. March 25 Meeting with PUA Auditors
 - i. Audit Will Be Presented in May, 2013
 - ii. Substantially Complete, Except for Developer Reimbursements
 - b. Wholesale Customer Committee Meeting March 25 and April 1
 - i. Well Attended by Wholesale Representatives
 - ii. Generally Receptive to Minimum Monthly Bill Parity
 - iii. Refining Methodology
 - c. Meetings of March 27
 - i. Meeting with Don Waldon on Falconhead Closeout
 - ii. FM 1826 16" Water Transmission Main Meeting
 - iii. Barton Creek West WSC Board Meeting

- d. Highland Lakes Cooperative - Steering Committee Meeting of March 27 and April 3
- 3. Request for Water/WW Service
 - a. Goldenwood West Resident
 - b. Proposed Development at Bee Cave Parkway and RR 620
- 4. Development Reimbursement and Reservation Fee Activities

TCMUD 12 Exhibit No.5 (Joyce Rebuttal) at JJJ Exhibit R7:

**Memorandum from Don Rauscher to the
WTCPUA Board of Directors on May 19, 2013, pg. 3.**


WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY

12117 Bee Cave Road
 Building 3, Suite 120
 Bee Cave, Texas 78738
 Office: 512/263-0100
 Fax: 512/263-2289
www.wtcpua.org

MEMORANDUM

TO: Board of Directors
FROM: Don Rauschuber, General Manager
DATE: May 19, 2013
RE: Discussion Items for General Manager's Report

Please be advised that the following items will be discussed at the May 23, 2013 Board of Directors meeting under the General Manager's Report.

1. **WTCPUA Water and Wastewater Operational Matters**
 - a. **Water Supply and Treatment**
 - i. **STES Preventative Maintenance Program**
 STES 6-month and 1-year is substantially complete. A PM report is being prepared by STES and should be submitted to the PUA within the next month.

Recommendation: Await STES PM Program report.
 - ii. **General Water Operations**
 During the past week, the PUA treated and supplied 7 to 8 mgd to customers. WT Plant 2 (10 mgd) has a malfunctioning sludge wasting valve. STES is investigating the cause of valve failure. In the interim, STES is manually operating a secondary backup sludge waste valve.

Recommendation: Repair/replace malfunctioning primary sludge wasting valve as soon as possible.
 - b. **Wastewater Collection and Treatment**
 - i. **Lake Pointe Odor Complaints: May 3, May 4, May 5, and May 6, 2013** – On May 4, it was determined that noxious odors emitted from LP Plant 2 Digester is the result of anaerobic conditions due to the lack

of basin aeration. An STES operator intentionally terminated air injection for a period of approximately 8-hours into the Plant 2 Digester in an effort to promote sludge thickening. As a result of this action, hydrogen sulfide odors emitted from the plant and the PUA received numerous odor complaints over a 4-day period. STES has now implemented preliminary-written Lake Pointe WWTP standard operating procedures.

PUA received additional LPWWTP odor complaints on May 14, 2013, from residents located on Carlsbad Drive. PUA and STES representatives investigated, but a cause for noxious odor emissions was not determined.

Recommendation: Staff recommends that STES prepare detail-facility specific SOPs and EOMs for the LPWWTP, Regional Water Plant, and for other key PUA facilities and submit same to the PUA for review and approval. This activity should be done as soon as possible.

- ii. **LTWWPT Plant 2 Cleaned and Inspected:** On May 6, 2013, STES cleaned LPWWTP Plant 2 Clarifier (see attached photos). It was discovered that the clarifier's sludge rakes and concrete floor are damaged. Structural members that support the rakes are out of alignment, causing the rakes to drag on one side and elevate on the other side. During the cleaning process a garden hose was removed from the clarifier. This hose was wrapped around the rake drive shaft, possibly causing clarifier. The clarifier's concrete floor may have been damaged due to the "dragging" rakes.

Recommendation:

1. Perform immediate surface adjustments to the rake drive shaft (two of the four fastening bolts are missing) in an attempt to vertically align the drive shaft.
 2. Drain the clarifier and make rake adjustments. This activity must be performed within a 6 to 8 hour period.
 3. Following completion of the Bohls WWTP, the LPWWTP Plant 2 Clarifier should undergo major restoration.
2. **LCRA Pro Rata Curtailment:** On May 13, 2013, PUA staff met LCRA representatives concerning LCRA's recent Pro Rata Curtailment Notice. The PUA assigned Pro Rata Curtailment Schedule (attached) was prepared by LCRA prior to March 19, 2012. LCRA staff indicated that the PUA may request an amendment to the LCRA prepared schedule to seek an increase in allowable Pro Rata water use to provide for PUA growth and water losses associated with the

PUA transport of raw water for PUA Wholesale Customers who have LCRA Firm Raw Water Contracts.

Recommendation: Prepare and submit to the LCRA a request to amend the PUA assigned Pro Rata Curtailment Schedule.

3. **Wholesale Water and WW Customer Committee:** On May 6 and May 14, PUA Staff held "group" Wholesale Customer meetings. The purposes of these meetings were to allow Staff to present updated wholesale rate methodology and analyses and to give Wholesale Customers an opportunity to provide input and vet questions. As a result of these meetings, Nelisa Heddin provided Customers with individual updated wholesale rate schedules and LG prepared a draft wholesale contract amendment. Staff requested Wholesale Customers provide final comments and responses by May 24, 2013.

Recommendation: Await Wholesale Customer responses and process.

4. **Service Extension Requests:** PUA is currently processing approximately 60 SER applications. Since the last Board meetings, the PUA has received several inquiries (e.g., Hatchet Tract (2,000 LUEs, Hamilton Corner (unknown), and Sawtooth 226 LUEs) and SER Applications (e.g., Trautwine Road Development 175 LUEs) cumulatively requesting water and/or WW service for two thousand plus water LUEs. PUA staff is informing developers desiring water service for hundreds or even a thousand plus LUEs (as opposed to small "in-field" service request) of the PUA Board's policy not to exceed a water supply and treatment capacity of 27 mgd. PUA staff is currently updating our existing water service level and future service projections in an effort to evaluate the timing and need to increase the PUA's water treatment capacity from 20 mgd to 27 mgd and to determine how close the PUA is to the 27 mgd ceiling given current commitments.

Recommendation: PUA staff complete update for water and sewer request service levels for presentation to the Board.

5. **Highland Lakes Firm Water Cooperative:** The HLFWC Steering Committee held two meetings since the May 2, 2013 Board meeting to discuss and prepare a formal request to the TCEQ for a contested case hearing pertaining to the LCRA's 2012 Water Management Plan. Currently, the TCEQ has received over 40 requests for a contested case hearing. Staff's understands the City of Austin will file a contested case hearing request in the very near future.

Recent new HLFWC members include the City of Largo Vista, Kingsland WSC and others.

Recommendation: Steering Committee should finalize and submit a request for a contested case hearing.

6. Other PUA Staff Activities Since Last Board Meeting:
- i. Review of FY 2012 Draft Audit prepared by Maxwell, Locke & Ritter – Final Draft will be presented as part of this Board Agenda.
 - ii. Numerous Staff/Project Team meetings and conferences.
 - iii. PUA-STES Weekly Ops Meetings
 - iv. Two meetings with DSWSC on wholesale rates and proposed contract amendments
 - v. Meeting with TCWCID 17 on wholesale wastewater rates
 - vi. Meeting with Sawtooth reps on W & WW Service for a FM 620 @ Falconhead Blvd.
 - vii. Meeting with Rim Rock reps on developer reimbursements
 - viii. Meeting with High Pointe reps on developer reimbursements
 - ix. Meeting with Walters SW on Estates Center II
 - x. Meeting with PUA Auditors on FY 2012 Audit
 - xi. Meeting with The Wallace Group on LPWWPT – Final Draft Report to be submitted in the immediate future.

TCMUD 12 Exhibit No.5 (Joyce Rebuttal) at JJJ Exhibit R9:

**Letter from Water Resources Management, LLC to WTCPUA
Board President Larry Fox dated March 12, 2013, pgs. 2, 3, and 8.**

See, especially, pg. 8 **“This proposed methodology is a change
from the utilized method of assessing minimum bills to
wholesale customers.”**



Water Resources Management, LLC

March 12, 2013

Larry Fox
Board President
West Travis County Public Utility Agency
12117 Bee Cave Road
Building 3, Suite 120
Bee Cave, Texas 78738

Re: Wholesale Customer Minimum Bill

Dear Mr. Fox,

Water Resources Management, LLC (WRM) is pleased to have the opportunity to assist the West Travis County Public Utility Agency (Agency) with evaluating options for recovery of the Agency's capital costs associated with reserving service for wholesale customers.

I. Background

Current Commitments

The Agency has inherited numerous contracts from the LCRA where wholesale customers are provided with commitments for current and future service. These agreements generally indicate specific capacity reservations for each wholesale customer. Table 1 outlines agreements for the SH 71 System; Table 2 outlines agreements for the US 290 System. In totality, wholesale customers have reserved approximately 16 MGD of capacity.

Table 1: Summary of Wholesale Capacity Commitments for the SH 71 System

SH 71 System	Contractual Commitment (gal/day)
Barton Creek West	965,952
Senna Hills	907,000
Crystal Mountain	144,000
EISD	42,900
Lazy Nine	5,068,000
Deer Creek	576,000
Travis County MUD #12	2,073,600
Masonwood	538,272

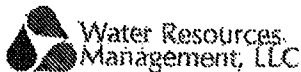


Table 2: Summary of Wholesale Capacity Commitments for the US 290 System

US 290 System	Contractual Commitment (gallons/day)
Dripping Springs WSC	1,000,000
Belterra - HCWCID #1	1,512,576
Belterra - HCWCID #2	1,137,024
Hays Cnty Reunion Ranch (Krasovek)	553,000
City of Dripping Springs (Headwaters)	1,612,800

Reserved Capacity

Generally, utilities having limited system capacity may elect to allow customers to “reserve” capacity on the system. In so doing, these customers are able to demonstrate to their bond holders their ability to ensure utility services and also secure their project’s water supply needs; thereby securing the long-term viability of their development.

Given that the Agency’s water system has limited capacity, by allowing developers to reserve capacity on the system, the Agency has less capacity available to serve other customers. As a result, by reserving capacity for future projects that will come at some unknown point in the future; the Agency has less capacity to serve other projects that could come on-line sooner than those with reserved capacity. In effect, the Agency is assuming risk of whether or not a development will build in the future. Furthermore, the Agency must ensure facility capacities are sized to accommodate these commitments, which comes at a significant cost to the Agency. These costs are incurred well before the customers are on-line.

Wholesale Customer Billing

The Agency’s costs of providing services to wholesale customers are recovered through impact fees, monthly minimum billing, and volumetric charges.

Impact fees are designed to recover the cost of building excess capacity to meet the needs of growth from future customers. However, since the Agency has adopted an impact fee that is equivalent to 50% of the Agency’s actual costs of constructing those facilities, the Agency must recover the remaining 50% of costs from either a monthly minimum bill and/or volumetric rates.

II. Wholesale Minimum Monthly Billing Philosophy

Based on the Agency’s goals and objectives, **WRM recommends the following methodology** to calculate wholesale monthly minimum bills that:

1. Is consistent in methodology and application to the means in which the impact fees were determined;
2. Is consistent in methodology and application to the means in which the LUE reservation fees are determined;
3. Is based on the actual annual costs associated with reserving capacity on the system;
4. Meets the goal of requiring growth to pay for itself, to the greatest extent possible;



5. Ensures consistency in application among all customers;
6. Includes only regional facilities that are used and useful in maintaining capacity to serve the wholesale customers;
7. Provides for predictability of rates for wholesale customers.

III. Methodology and Findings

Given that large variations exist among the wholesale customers (some are new developments and others are entirely built-out), WRM is proposing a methodology where the Agency assesses a minimum bill which recovers the Agency's debt service and times coverage costs associated with system infrastructure. WRM recommends the Agency assess a volumetric rate that is designed to recover the annual operations, and maintenance expenses. By doing so the Agency:

1. Stabilizes revenue recovery for annual debt service requirements; thereby removing the risks associated with potential volatility of revenue recovery attributable to weather fluctuations;
2. Alleviates risks of cross subsidization among wholesale customers for capital costs (built-out customers that use more water are no longer paying debt to provide system capacity to serve those who are not yet built-out);
3. Clearly identifies and allocates each customer's capital costs and recovers solely those costs.

In evaluating wholesale minimum monthly fees, WRM used a systematic approach to identify and further allocate system costs.

Step 1: Isolation of Currently Existing Regional Projects – WRM relied upon the Agency's 2012 Impact Fee Study to identify the Agency's cost of purchasing the current facilities from the LCRA. These facilities are categorized into the following three categories:

1. System Wide Projects – Projects that are used and useful for all the Agency's customers, regardless of where each are located within the system, and generally include, the raw water intake structure, and the water treatment plant. These projects are outline on table 3 below.

Table 3: Currently Existing Regional System Wide Projects

System Wide Projects	Actual Project Cost
Uplands WTP Chem Building	\$ 2,141,458
Uplands WTP Plant	40,249,533
Uplands Raw Water Intake Expansion	416,305
High Service Pump Station 8 MGD to 14 MGD	4,034,066
Uplands Clearwell #2	997,229
	\$ 47,838,591



2. SH 71 System Projects – Projects that are used and useful to the Agency’s customers lying within the SH 71 System footprint, as defined in the 2012 Impact Fee Study. These projects are outlined on table 4 below.

Table 4: Currently Existing Regional SH 71 Projects

SH 71 System Projects	Actual Project Cost
Lazy 9 SW 71 Transmission Main	\$ 3,090,461
Transmission Main from Uplands Plant to Bee Cave Pump Station	1,556,779
Wolf Mountain (Crystal Mountain) EST	1,917,518
Senna Hills By-Pass Line	559,677
Hamilton Pool Road 1280 Pump Station Water Line	330,552
Hamilton Pool Road Water Line	6,624,510
Home Depot Pump Station	392,792
Home Depot Ground Storage Tank	147,043
Bee Cave Ground Storage Tank, Pump Station, Piping (off Cuernavaca)	699,851
Bee Cave Water Line to Cuernavaca	990,492
	\$ 16,309,675

3. US 290 System Projects – Projects that are used and useful to the Agency’s customers lying within the US 290 System footprint, as defined in the 2012 Impact Fee Study. These projects are outlined on table 5 below.

Table 5: Currently Existing Regional US 290 Projects

US 290 System Projects	Actual Project Cost
Countyline Pump Station Upgrade	
1800 gpm to 3450 gpm	\$ 1,684,429
290 Pipeline	
a) 24" SWPPS to County Line	12,841,593
b) 20" Countyline to 1420 HGL EST	3,411,212
20" Main Uplands to SW Parkway (Easements)	506,714
1420 Elevated storage	2,197,353
Sawyer Ranch Road Ph 1 20"	1,183,948
Sawyer RR Ph 1 (Darden Hill)	1,293,619
	\$ 23,118,867

Only regional projects as outlined in the Agency’s 2012 Impact Fee Study are included in this analysis.

Step 2: Isolation of Future Regional Projects – WRM relied upon the Agency’s 2012 Impact Fee Study to identify projected future costs of regional projects that are anticipated to be built between now and 2015. It is projected that in the summer of 2013, the Agency will issue bonds to not only fund the next installment purchase payment to the LCRA, but also CIP projects that should be constructed through 2015 (when the next installment purchase payment to the LCRA is due). As it is anticipated that the Agency will include funding for these projects in the Series 2013 bonds, the Agency will begin incurring



these costs in FYE 2014, as annual debt service payments. The projects are also broken into the three categories (System Wide, US 290, and SH 71 Systems) and are directly taken from the Agency's impact fee study. These projects are outlined in tables 6-8 below.

Table 6: Future System Wide Projects

System Wide Projects	Year Scheduled	Future Cost
Surge Tank on Raw Water Line	2013	1,273,358
WTP Expansion	2018	25,451,225
Raw Water Pump Station Improvements	2018	2,545,122
20" Raw Water TM	2018	3,817,684
		\$ 33,087,389

Table 7: Future SH 71 Projects

SH 71 Projects	Year Scheduled	Future Cost
HPR 1420 Hydrotank Upgrade (add 750 gpm pump)	2014	\$ 291,143
Hwy 71 EST (0.35 MG)	2014	2,562,062
Bee Cave PS Upgrade 1500-3000 gpm firm	2014	628,870
Misc. Impacts for 1280 pressure plane	2015	1,164,574
		\$ 4,646,649

Table 8: Future US 290 Projects

US 290 Projects	Year Scheduled	Future Cost
SW Parkway PS 3567 to 5900 GPM (Ongoing)	2012	\$ 282,424
SW Parkway PS Upgrade 5900 - 7800 gpm	2015	698,744
SWPPS 20" TM	2013	4,149,391
1240 Pressure Plane Study and WL*	2014	1,571,609
1340 EST (0.6 MG), Pump Station Upgrade, WL	2015	7,569,730
FM 1826 Ph 4 - 16" TM	2013	1,042,836
FM 1826 Extension - 16" TM	2016	2,399,022
Heritage Line - 16" TM*	2016	1,439,413
1420 HGL Pump Station	2015	1,164,574
		\$ 20,317,744

Future CIP scheduled for construction after 2015 were not included in the analysis. However, when the Agency issues bonds for these projects and thereby incurs costs associated with these improvements, the Agency should amend its LUE reservation fees at that point to recover these additional costs.

Step 3: Next, WRM determined the Agency's projected cost per gallon, per day, of system capacity. As the current system capacity is 20 MGD, system wide costs were divided by 20 million gallons. Capital



projects for the SH71 system were divided by 11 million gallons, and capital projects for the US 290 system were divided by 9 million gallons; which reflects the proportion of the total 20 MGD system reserved for the SH 71 and US 290 systems. Tables 9 and 10 illustrate the Agency's cost per gallon of capacity for each component.

Table 9: SH 71 System cost per Gallon Capacity

SH 71 System Costs	System Wide Projects Cost per Gallon	SH71 Projects Cost per Gallon	Total Cost per Gallon
Existing Project	\$ 2.39	\$ 1.48	\$ 3.88
Future CIP (2012-2015)	\$ 0.06	\$ 0.42	\$ 0.49
Future CIP (after 2015)	\$ -	\$ -	\$ -
	\$ 2.46	\$ 1.91	\$ 4.36

Table 10: US 290 System cost per Gallon Capacity

US 290 System Costs	System Wide Projects Cost per Gallon	US290 Projects Cost per Gallon	Total Cost per Gallon
Existing Project	\$ 2.39	\$ 2.56	\$ 4.96
Future CIP (2012-2015)	\$ 0.06	\$ 1.83	\$ 1.89
Future CIP (after 2015)	\$ -	\$ -	\$ -
	\$ 2.46	\$ 4.39	\$ 6.85

Step 4: Once a total capital cost per gallon capacity is determined, the next step is to allocate capital costs to wholesale customers based upon the actual cost per gallon of capacity for each system. The results of this analysis are illustrated on Tables 11 and 12 below.

Table 11: Capital Cost Allocation for SH 71 System

SH 71 System	Contractual Commitment (gal/may day)	Cost per Gallon	Capital Cost Allocated to Customer
Barton Creek West	965,952	\$ 4.36	\$ 4,214,822
Senna Hills	907,000	\$ 4.36	\$ 3,957,591
Crystal Mountain	144,000	\$ 4.36	\$ 628,328
EISD	42,900	\$ 4.36	\$ 187,189
Lazy Nine	5,068,000	\$ 4.36	\$ 22,113,641
Deer Creek	576,000	\$ 4.36	\$ 2,513,310
Travis County MUD #12	2,073,600	\$ 4.36	\$ 9,047,917
Masonwood	538,272	\$ 4.36	\$ 2,348,689



Table 12: Capital Cost Allocation for US 290 System

US 290 System	Contractual Commitment (gal/max day)	Cost per Gallon	Capital Cost Allocated to Customer
Dripping Springs WSC	1,000,000	\$ 6.85	\$ 6,847,887
Belterra - HCWCID #1*	1,512,576	\$ 6.85	\$ 10,357,949
Belterra - HCWCID #2*	1,137,024	\$ 6.85	\$ 7,786,211
Hays Cty Reunion Ranch (Krasovek)*	553,000	\$ 6.85	\$ 3,786,881
City of Dripping Springs (Headwaters)*	1,612,800	\$ 6.85	\$ 11,044,271

The total capital cost allocation stated above is a summary of the Agency's costs associated with obtaining facilities to provide each customer with the capacity that they have reserved on the system. These costs will increase as the Agency is required to build additional facilities on the system.

Step 5: As the Agency will fund these costs through the issuance of bonds, the Agency will have an annual cost impact associated with maintaining excess system capacity to meet future demands in the form of annual debt service and times coverage. Therefore, in computing wholesale minimum bill, WRM used the allocated capital cost for each customer determined in step 4 above and calculated an annual debt service payment associated with each customer. The Agency has adopted impact fees that recover 50% of the costs for the required capital projects; therefore, a reduction of 50% of annual debt service costs was credited to each wholesale customer. This amount was then grossed up to account for the Agency's 25% times coverage requirement. The result is the actual annual cost, associated with maintaining capacity for each wholesale customer's demands. The proposed minimum bill for each wholesale customer is shown in tables 13 and 14.

Table 13: Calculation Wholesale Minimum Bill SH 71 System

SH 71 System	Annual Debt Service	Less Impact Fee Adjustment	Plus Times Coverage	Annual Minimum Charge	Adjusted Monthly Debt Service Cost
Barton Creek West	\$ 274,180	\$ (137,090)	\$ 68,545	\$ 205,635	\$ 17,136
Senna Hills	\$ 257,447	\$ (128,723)	\$ 64,362	\$ 193,085	\$ 16,090
Crystal Mountain	\$ 40,874	\$ (20,437)	\$ 10,218	\$ 30,655	\$ 2,555
EISD	\$ 12,177	\$ (6,088)	\$ 3,044	\$ 9,133	\$ 761
Lazy Nine	\$ 1,438,524	\$ (719,262)	\$ 359,631	\$ 1,078,893	\$ 89,908
Deer Creek	\$ 163,494	\$ (81,747)	\$ 40,874	\$ 122,621	\$ 10,218
Travis County MUD #12	\$ 588,580	\$ (294,290)	\$ 147,145	\$ 441,435	\$ 36,786
Masonwood	\$ 152,786	\$ (76,393)	\$ 38,196	\$ 114,589	\$ 9,549



Table 14: Calculation Wholesale Minimum Bill US 290 System

US 290 System	Annual Debt Service	Less Impact Fee Adjustment	Plus Times Coverage	Annual Minimum Charge	Annual Debt Service
Dripping Springs WSC	\$ 445,465	\$ (222,732)	\$ 111,366	\$ 334,099	\$ 27,842
Belterra - HCWCID #1	\$ 673,799	\$ (336,900)	\$ 168,450	\$ 505,350	\$ 42,112
Belterra - HCWCID #2	\$ 506,504	\$ (253,252)	\$ 126,626	\$ 379,878	\$ 31,657
Hays Cnty Reunion Ranch (Krasovek)	\$ 246,342	\$ (123,171)	\$ 61,586	\$ 184,757	\$ 15,396
City of Dripping Springs (Headwaters)	\$ 718,446	\$ (359,223)	\$ 179,611	\$ 538,834	\$ 44,903

These monthly minimum bill requirements would be charged to wholesale customers beginning October 1, 2013 and would continue until 2015, when the Agency issues bonds for additional capital projects. Capital costs for new projects will be allocated to wholesale customers in the same manner described above; along with minimum bills reassessment at that point.

IV. Comparison with Current Methodology

This proposed methodology is a change from the utilized method of assessing minimum bills to wholesale customers. Currently, based upon recollections of customers and LCRA staff, the minimum bills are LCRA's negotiated fees and were not calculated based on actual cost data. The current minimum bills do not recover the annual debt service costs of the Agency; the balance is presumably recovered through the volumetric rates. It is expected that the Agency's volumetric rates should decrease as a result of the change in methodology. As the Agency is in the process of analyzing rates, based upon FYE 2014 budgeted O&M expenses, it is currently unidentified what the revised volumetric rate will be.

WRM recognizes that in order to thoroughly evaluate this proposed methodology, some means of benchmarking the change should be performed. WRM utilized the rate model developed in 2012, which arrived at a 31% recommended increase in wholesale rates, as a basis for benchmarking.

First, using the FYE 2013 budgeted expenses, WRM identified that if solely recovering O&M costs from wholesale customers the volumetric rates would be approximately \$2.27 per thousand gallons, in comparison to the \$3.15 per thousand gallons that would be required to partially fund debt service through the volumetric rates.

Second, WRM calculated the annual fees that would have been paid to the Agency had they adopted the 31% across the board increase to wholesale customers; and compared those fees to the fees that would be paid using the revised methodology, using identical O&M costs and consumption, utilizing the proposed methodology.

The resultant impact to customers is outlined on Schedule 1. Essentially, wholesale customers who are built-out or closer to being built out will see a reduction in their costs; but those who are fairly new will see an increase in their annual costs. This is simply due to the impact of the higher capacity reservations in comparison to actual water consumption.



It must be emphasized that the above stated analysis was performed to give an estimate of potential impact to costs. Actual volumetric rates will be determined at a later point in the rate study and will be based upon revised O&M costs and updated consumption projections.

V. Mitigation of Impact

As seen on Schedule 1, wholesale customers who are not built out may have an extreme effect as a result of this approach; that may prove to be extremely problematic to these customers. One means where the impact may be mitigated is to amend those customers' minimum bills so that they escalate annually as the development builds out. The customer will still have the overall capital requirement; however, the annual payment for that requirement is set to accommodate that customer's growth. In these cases, the wholesale customer would have a higher interest expense burden due to the up-front impacts of capitalizing interest. The annual payment plan would have to be clearly defined prior to the Agency's issuance of system wide debt. This would alleviate any cross subsidization among customers, yet, it would also accommodate those entities who are still growing. Schedule 2 provides an illustration of how such an escalating minimum bill would work.

VI. Recommendations

The project team recommends the following:

1. The Agency adopt the above stated monthly minimum bills, as listed on Tables 13 and 14 effective October 1, 2013, for those wholesale customers who have the existing consumption and customer base to reasonably absorb the impact;
2. The Agency assesses a monthly minimum bill schedule that escalates annually, recovering the same net present value for the allocated customer costs for wholesale customers who do not have the existing consumption and customer base to reasonably absorb the impact. This escalating fee schedule would be a long term obligation and would not be subject to amendment except for instances where the Agency refunds its bonds, thereby is able to restructure its debt;
3. The current minimum bill amounts will continue until the Agency's Series 2013 bonds and/or any refunding bonds have been paid in full;
4. The Agency should amend minimum bills if and when additional projects are built that have not been identified above. Determination of amended minimum bill amounts should use the same methodology described for all new regional capital projects. The amounts would be added to the existing minimum bills;
5. The Agency should utilize this same methodology for assessing minimum bills for any and all future wholesale customers.
6. For instances in which the Agency receives an LUE reservation fee for the same development, and that LUE reservation fee results in revenue to the Agency (i.e. the fee is not subsequently refunded to the developer), a credit would be provided against the wholesale customer's minimum bill in an amount equal to the LUE reservation fee received.

By doing so, the Agency:

1. Alleviates cross subsidization among wholesale customers;
2. Alleviates cross subsidization between retail and wholesale customers;
3. Requires growth to pay for itself;



4. Removes the "risk" associated with whether or not a particular development will grow (and thereby the risk of holding capacity for a development that is not growing) and puts that risk on the individual wholesale customer;
5. Requires each wholesale customer to pay for the capacity reserved on the system.

West Travis County Public Utility Agency
FYE2014 Planning Fee Planning

Schedule 1
Comparison of Current Structure versus Proposed Wholesale Billing Structure

SH 71 System	Current Estimated Use	FYE2013 Minimum Bill (31% increase to previous rates)	FYE2013 Cost of Service Volumetric Charge	Total FYE 2013 Cost of Service Charge	Proposed Adjusted Minimum Monthly Bill	Estimated Adjusted Volumetric Fees (adjusted for removal of debt service from volumetric charge)*	Total Adjusted Annual Cost	Increase/ (Decrease)	Percent Annual Increase/(Decrease)
Barton Creek West	122,017,000	\$ 2,891	\$ 442,922	\$ 477,612	\$ 17,136	\$ 276,979	\$ 482,614	\$ 5,002	1%
Senna Hills	124,860,000	\$ 4,976	\$ 453,242	\$ 512,953	\$ 16,090	\$ 283,432	\$ 476,517	\$ (36,435)	-7%
Crystal Mountain	19,833,212	\$ 874	\$ 71,995	\$ 82,460	\$ 2,555	\$ 45,021	\$ 75,677	\$ (6,803)	-8%
EISD	9,101,000	\$ 233	\$ 33,037	\$ 35,838	\$ 761	\$ 20,659	\$ 23,792	\$ (6,046)	-17%
Lazy Nire	19,414,470	\$ 13,607	\$ 70,475	\$ 84,175	\$ 89,908	\$ 44,071	\$ 1,122,964	\$ 889,205	380%
Deer Creek	33,314,787	\$ 3,335	\$ 120,933	\$ 150,953	\$ 10,218	\$ 75,625	\$ 198,745	\$ 37,292	23%
Travis County MUD #12	19,985,090	\$ 12,580	\$ 72,546	\$ 235,504	\$ 36,786	\$ 45,366	\$ 486,801	\$ 263,297	118%
Masonwood		\$ 6,182	\$ -	\$ 24,184	\$ 9,549	\$ -	\$ 314,588	\$ 40,405	54%

US 290 System	Current Estimated Use	FYE2013 Minimum Bill (31% increase to previous rates)	FYE2013 Cost of Service Volumetric Charge	Total FYE 2013 Cost of Service Charge	Proposed Adjusted Minimum Monthly Bill	Estimated Adjusted Volumetric Fees (adjusted for removal of debt service from volumetric charge)*	Total Adjusted Annual Cost	Increase/ (Decrease)	Percent Annual Increase/(Decrease)
Dripping Springs WSC	175,091,975	\$ 6,067	\$ 635,584	\$ 710,598	\$ 27,842	\$ 397,459	\$ 731,557	\$ 23,168	3%
Bellera - HCWCID #1	202,983,950	\$ 9,938	\$ 736,832	\$ 856,098	\$ 42,112	\$ 480,774	\$ 596,123	\$ 110,030	13%
Bellera - HCWCID #2	24,792,961	\$ 8,691	\$ 89,998	\$ 194,239	\$ 31,657	\$ 56,280	\$ 436,158	\$ 241,866	124%
Hays City Reunion Ranch (Kasovek)		\$ 4,256	\$ -	\$ 51,068	\$ 15,396	\$ -	\$ 184,757	\$ 133,690	262%
City of Dripping Springs (Headwaters)		\$ 9,338	\$ -	\$ 112,058	\$ 44,903	\$ -	\$ 538,834	\$ 426,776	381%

WTCPUA000012020

TCMUD 12 Exhibit No.5 (Joyce Rebuttal) at JJJ Exhibit R8:

**Memorandum from Lauren Kalisek to the
WTCPUA Board of Directors on June 6, 2013, pg. 1.**



816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532
www.lglawfirm.com

MEMORANDUM

TO: West Travis County PUA Member Entities

FROM: Lauren Kalisek, General Counsel, West Travis County PUA

CC: PUA Board Members, Don Rauschuber, Frank Salvato, Patty Akers, Randy Wilburn, Mark Kennedy

DATE: June 6, 2013

RE: Approval of West Travis County PUA Water and Wastewater Rates

Pursuant to the terms and conditions of the Acquisition, Water Supply, Wastewater Treatment and Conditional Purchase Agreement ("Participant Agreement") entered into in 2012 by the City of Bee Cave, Hays County, West Travis County MUD No. 5 (collectively, the "Member Entities") and the West Travis County Public Utility Agency (the "PUA"), the PUA is respectfully requesting the governing bodies of each Member Entity consider and adopt a resolution, ordinance or order, as appropriate, that confirms and ratifies the retail and wholesale water and wastewater rates, fees and charges set by the PUA for customers of the West Travis County Water and Wastewater System (the "System") in the form enclosed with this memorandum. Such approval is required in anticipation of the PUA's upcoming bond issue scheduled to close on August 1 that will include the funds necessary to make the second installment payment to the Lower Colorado River Authority ("LCRA") pursuant to the PUA's purchase agreement with the LCRA. This request is made pursuant to the terms of the Participant Agreement.

In the Fall of 2012, the PUA conducted a cost of service rate study that resulted in a recommended increase to retail wastewater rates from \$4.75/1,000 gallons to \$4.87/1,000 gallons. In addition, the rate study also recommended adjustment to wholesale customer rates because the study determined that the PUA was underrecovering from this class of customers. To minimize the subsidization of service to wholesale customers by retail customers, the PUA Board took action to increase wholesale water rates by 15.5% rather than the 31% recommended by the rate study, and to increase wholesale wastewater rates by 18%. The PUA Board also directed staff to continue to review wholesale rates and attempt to identify a methodology acceptable to wholesale customers that would address the remaining needed increase in wholesale rates. Enclosed with this memorandum is a summary letter from the PUA's rate consultant, Water Resources Management, LLC, providing an overview of the cost of service rate study.

3756096.2

Lloyd Gosselink Rochelle & Townsend, P.C.

HC 0873
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Memorandum to West Travis County PUA Member Entities
Page 2
June 6, 2013

Also in the Fall of 2012, the PUA conducted an impact fee study pursuant to Chapter 395 of the Local Government Code which resulted in revised water and wastewater impact fees for the System.

At this time, the PUA plans to move forward with the 2013 Series bond issue based on the retail and wholesale rates, fees, and charges currently in effect and as approved in 2012. (See Attachments A and B to the draft resolution/ordinance/order).

Also enclosed with this memo is an excerpt from the Official Statement of the PUA's Series 2012 Bond Issue that includes more detail on the history of the PUA, the System, and the acquisition of the System by the PUA.

Representatives of the PUA will attend meetings of the Member Entities on June 11, 2013 and look forward to answering any questions.

WTCPUA Exhibit No.1 (Rauscher Direct):

Attachment Q (Resolution and Form Amendment), third recital.