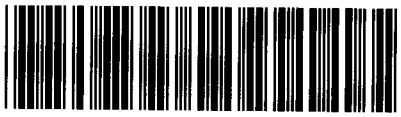

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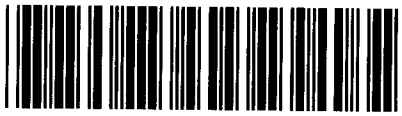

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SOAH DOCKET NO. 473-14-5244.WS
PUC DOCKET NO. 42866

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

RESPONSE OF THE CITY OF BEE CAVE TO THE MOTION FOR REHEARING OF TCMUD 12

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TO THE HONORABLE PUBLIC UTILITY COMMISSION:

COMES NOW, the City of Bee Cave and presents this Response to the Motion For Rehearing of Travis County MUD 12 ("Movant").

I. INTRODUCTION

The Commission has issued an order that is supported by substantial evidence in the record. An appeal of this order will fail if the Commission has considered everything that it should consider, does not consider matters that it should not consider, does not decide arbitrarily, makes findings that support its conclusions and avoids making unnecessary findings.

The public interest rule has a purpose, based on a history of quagmire litigation that once beset contested cases over wholesale water and wastewater rates. The Legislature solved that problem statutorily and the public interest rule was adopted to be an integral part of that solution. This is explained well enough in the preambles to the proposal and adoption of the public interest rule. Those have already been commended to the Commission, at least by reference, by the ALJ and various parties in the case at hand.

Unfortunately, it can be very easy to lose sight of legislative intent and the purpose of the public interest rule when dissecting the legal language of the public interest rule in a contested case, as it is juxtaposed against the technical language of the engineering, accounting and economic analysis associated with rate setting. If that purpose does not adequately inform the decision in a case like this, there is a high risk that wholesale rate reviews become *de facto* retail rate cases. This would thwart the Legislature's intent, stated clearly by establishing wholesale rate review jurisdiction in statutory provisions distinct and separate from retail rate jurisdiction.

II. RESPONSE TO POINT OF ERROR NUMBER ONE

The Commission did NOT err in refusing to find that the Agency is a "retail public utility." The protested rates in this case affect a wholesale market, not a retail market. The fact question of

whether the PUA is a monopoly in this wholesale market is not determined, or even affected, by its status in the retail market. The finding that Movant prefers is not material to issues in this case. Nor is it necessary to the Commission's decision.

III. RESPONSE TO POINT OF ERROR NUMBER TWO

The Commission did NOT err in concluding that the Agency did not change its methodology for computing its revenue requirement. The Commission did not say, as suggested by Movant (with reference to FOF 63-64), that the only two methodologies for computing revenue requirement are the cash-needs basis and the utility basis. The Commission simply noted that the American Water Works Association M1 Manual identified these two as generally accepted methodologies. Bee Cave has no doubt that this Commission understands that other methodologies exist.

More importantly, however, the Commission found that the cash-needs method was used to determine the revenue requirement for both the prior rates and the protested rates (FOF 64), and that when it computed the revenue requirement for the protested rates, the Agency used the same methodology that had been used for the prior rates (FOF 65). There is ample evidence in the record to support these findings.

Movant's argues that the Commission erred on this point, effectively by failing to acknowledge that the methodology used to set the prior rates was a contractual methodology. Assuming only for the sake of argument, without conceding or agreeing to that proposition, that such a methodology can be discerned from the language of the contracts in this case, Movants fails if the contractual methodology to establish the revenue requirement for the prior rates is also, at the same time, what the M1 Manual describes as the cash-needs methodology. Attachment A to the Motion for Rehearing does not bear out Movant's conclusion that the

revenue requirement determinations for the protested rates and the prior rates are not both products of a cash-needs methodology. Whether by contract stipulation or otherwise, they are.

There is also no basis in evidence for a conclusion that the same methodology cannot yield different results, especially in different timeframes. Movant's focus on the different rates that emerge in the different rate years does not lead to a logical conclusion that those rates must signal a change in methodology.

Exhibit B to the Motion for Rehearing also does not support the proposition that anything other than a cash-needs methodology was used to determine revenue requirement for both the protested rates and the prior rates.

All that Attachments A and B establish is that the revenue requirement for the protested rates is different than for the prior rates. These attachments do not evidence a change in methodology. Rates and revenue requirements can be different over time, even when using the same methodology.

To some, the meaning of the word "methodology" might seem confounding. But the testimony of experts in this case makes clear enough that a "methodology" should not be defined by detailed case-specific assumptions that are used when it is put into practice. It is not so difficult to understand the principles that should inform the correct application of a methodology, without resort to case-specific and potentially result-oriented data for explanation.

Movant wants the Commission to define "methodology," as used in the discussion of this issue, by evaluating the allocations and assumptions used when applying the cash-needs revenue requirement methodology. (*See* Movant's complaint about the seller "...changing the allocation formulas..." at page 8 of the Motion for Rehearing.) That tends to put the

proverbial cart before he horse, and would involve a cost-of-service analysis. This is contrary to a well-established rule, and throws the case prematurely into a full-blown rate case analysis. This would be contrary to the intent of the Legislature.

But such is the nature of the evidence presented by Movant in its attempt to characterize the protested rates as the result of a change in methodology. Movant points out that "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," but insists emphatically that "TCMUD 12 made no such argument and presented no evidence of what the Agency's monthly charge and volumetric rate should have been." Actually, Movant presented a cost-of-service analysis, but simply withheld testimony of the resultant rates. This does not mask the true nature of its analysis.

But the bottom line reality is that the same revenue requirement methodology was used for both the protested rates and the prior rates. The evidence of record supports this conclusion, and the Findings and Conclusions in the order are sound. The Commission did not err.

IV. RESPONSE TO POINT OF ERROR NUMBER THREE

The Commission did NOT err in concluding that the Agency did not change its methodology for computing its rates when it adopted the protested rates.

Movant complains that Finding of Fact 68A addresses only volumetric rate structures, and does not address monthly charge rate structures. This should be viewed as simply explanatory of rate structure methodology in general, inasmuch as the (non-exclusive) examples of inclining-block and phased or multi-step volumetric rates are not at issue in this case at all. The critical findings in the Order describe the rate structures of the protested rates

and the prior rates, and those rate structures are the same. (FOF 70, 70.A and 71)

Movant's argument here is much the same as its argument on revenue requirement methodology, including its reliance on Exhibits A and B to the Motion for Rehearing.

In Exhibit A, it is clearly contemplated that the monthly charge for both the protested rates and the prior rates would be adjusted from time to time. The description of the monthly charge for the protested rates is more detailed than the description for the prior rates monthly charge, but the difference between them is not a change in rate structure methodology.

Movant argues that the monthly charge for all wholesale customers was originally the same, even though they had separate contracts, suggesting that all wholesale customers should always have the same monthly charge. But evidence in Attachment A itself indicates that the monthly charge for each wholesale customer is affected by customer-specific considerations. Such considerations include the pace of build-out for each of the many developments in the service areas of the many wholesale customers. Attachment A suggests that another consideration could be the set of factors that affect pay-off of bonded indebtedness incurred by each individual wholesale customer to support its allocable share of the regional system. (For example, the language describing the monthly charge for the prior rates in the left column of Attachment A includes a specific focus on "District No. 12's allocable share," in a context that clearly indicates that such allocable share could change over time.) Unless all customers experience build-out at exactly the same rate and have exactly the same debt considerations, it is reasonable to expect that the monthly charges for the many wholesale customers will differ over time. Nothing in the record indicates this result would be a change in methodology. The difference between the two columns in Attachment A seems to be a level of detail, not a difference in methodology.

The same is true for the descriptions of protested and prior volumetric charges. The older description is not as detailed as the description for the newer, protested rates. But there is no indication of a change in methodology.

All of this simply illustrates how Movant has failed to carry its burden of proof on the whole record, assuming that Movant would include its best illustrations as attachments to its Motion for Rehearing.

V. RESPONSE TO POINT OF ERROR NUMBER FOUR

Other parties, particularly the Agency, WTCPUA, are better qualified to argue this point of error. Accordingly, Bee Cave defers to their argument.

VI. RESPONSE TO POINT OF ERROR NUMBER FIVE

The Commission did NOT err in concluding that the Agency did not abuse its monopoly power.

Movant's sole focus is on Findings of Fact 74-76, and Movant's offer of proof on certain testimony disallowed by the ALJ. However, none of these fine points, individually or together, are dispositive on the question of whether the Agency abused monopoly power. Accepting for argument's sake, without conceding or agreeing to them, the assertions that the Agency is a monopoly and that rates went up instead of down, the Agency did not abuse any such monopoly power.

In its argument on this point of error, Movant makes no mention of FOF 72-73 and other much more supportive findings, FOF 51-61. The question here is about abusive behavior. But these findings document evidence in the record showing Agency behavior that is not abusive. Not only did the Agency engage all of its wholesale customers in open discussion of the issues, but it did in fact adopt recommendations of the wholesale customer committee and those adopted

recommendations served as the basis for the monthly charge in the protested rates. Even in an argument that would describe the agency as a monopoly, this is not abusive behavior.

For this issue, the Commission could delete Findings of Fact 74-76, and overrule the ALJ on the excluded testimony that states that rates went up, because none of that amounts to a necessary finding, and it would not impair the efficacy of the order to do so.

VII. PRAYER

The Agency did not change the revenue requirement or rate methodologies and did not abuse monopoly power, if it had any such power. Bee Cave urges the Commission to rule on the Motion for Rehearing accordingly.

Respectfully submitted:

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ATTORNEYS FOR THE CITY OF BEE CAVE

CERTIFICATE OF SERVICE

I certify that a copy of this document has been served on all parties of record on ~~October~~ December 30, 2015, in accordance with TEX. GOV'T CODE §§2001.146(b) and 2001.142(a).

Jim Haley