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

PUBLIC UTILITY
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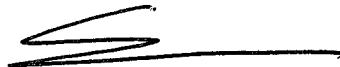
COMMISSION STAFF'S RESPONSE TO THE MOTION FOR REHEARING

Date: December 30, 2015

Respectfully Submitted,

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Index of Abbreviated Terms

<u>Abbreviation</u>	<u>Term</u>
Commission	Public Utility Commission of Texas
LCRA	Lower Colorado River Authority
Staff	Commission Staff of the Public Utility Commission of Texas
TAC	Texas Administrative Code
TWC	Texas Water Code
Travis County MUD No. 12	Travis County Municipal Utility District No. 12
West Travis County PUA	West Travis County Public Utility Agency

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COUNTY, TEXAS; AND WEST	§	
TRAVIS COUNTY MUNICIPAL	§	
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COMMISSION STAFF'S RESPONSE TO THE MOTION FOR REHEARING

Staff files its Response to the Travis County MUD No. 12's request for rehearing. In support of its Response, Staff states the following:

I. Summary of Staff's Response

The request for rehearing should be denied. The Travis County MUD No. 12 raises the same arguments that were considered by the Administrative Law Judge in his Proposal for Decision and that were considered by the Commission in adopting the Proposal for Decision. The evidence supports the finding that the West Travis County PUA did not abuse its alleged monopoly power, and thus the protested rates do not adversely affect the public interest. First, the evidence supports the finding that the West Travis County PUA did not change its methodology in calculating its revenue requirement or the protested rates. The West Travis County PUA used the cash needs basis in calculating the revenue requirement, and it used the same rate structure in calculating the protested rates. The Travis County MUD No. 12's assertions regarding the alleged change in methodology relate to the cost of service. Such assertions cannot be considered in the public interest inquiry because the Commission's substantive rules expressly prohibit such consideration.¹ Second, the evidence supports the finding that the West Travis County PUA did not have disparate bargaining power over the Travis County MUD No. 12. West Travis County PUA and Travis County MUD No. 12 had an arms-length relationship, and the Travis County

¹ "The commission shall not determine whether the protested rate adversely affects the public interest based on an analysis of the seller's cost of service." 16 TAC § 24.133(b).

MUD No. 12 had the option of building its own water treatment facilities.

II. Staff's Response

A. Response to Point of Error No. 1:

The Travis County MUD No. 12 incorrectly focuses on whether the West Travis County PUA is a monopoly

In asserting that the West Travis County PUA is a retail public utility, the Travis County MUD No. 12 incorrectly focuses the public interest inquiry on whether the West Travis County PUA is a monopoly.² The correct focus of the public interest inquiry is whether the “protested rate evidences the [the West Travis County PUA’s] abuse of monopoly power in its provision of water or sewer service to the [the Travis County MUD No. 12].”³ As further discussed in Subsections B and C, the evidence supports the finding that the West Travis County PUA did not abuse its alleged monopoly power.

B. Response to Points of Error Nos. 2 and 3:

The West Travis County PUA did not change its methodology to calculate its revenue requirement and the protested rates because it consistently used the cash needs method

The evidence supports the finding that the West Travis County PUA did not change its methodology in calculating the revenue requirement or the protested rates. The Travis County MUD No. 12’s assertions should be rejected for two reasons. First, with regard to the revenue requirement, Staff, the West Travis County PUA, and the Travis County MUD No. 12 all agree that the West Travis County PUA used the cash needs basis to calculate the underlying revenue requirements for the protested rates and the rates in effect prior to the protested rates.⁴ The cash

² Staff agrees with the Travis County MUD No. 12 that the West Travis County PUA is a retail public utility. The Texas Water Code defines a retail public utility as “any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.” TWC § 13.002(19).

³ 16 TAC § 24.133(a)(3).

⁴ See Direct Testimony of Heidi Graham, Staff Ex. 1 at 9; Direct Testimony of Jack Stowe, West Travis County PUA Ex. 3 at 11-15; Tr. at 198-99.

needs method is one of the ways to calculate a water utility's revenue requirement.⁵ However, the Travis County MUD No. 12 asserts that the West Travis County PUA changed its methodology in calculating the revenue requirement because certain cost allocation treatments were changed.⁶ This assertion must be rejected because analyzing cost allocation treatments entails a cost of service analysis.⁷ The Commission's substantive rules expressly prohibit a cost of service analysis in the public interest inquiry.⁸

Second, with regard to rates, the West Travis County PUA did not change its methodology in calculating the protested rates and the rates in effect prior to the protested rates because it used the same rate structure – i.e. a flat monthly charge and a flat volumetric rate – for both rates.⁹ Changes to the amounts of the flat monthly charge and the flat volumetric rate reflect a change of factors involving other wholesale customers of the West Travis County PUA. The Travis County MUD No. 12's assertions regarding the calculation of the protested rates must be rejected because these assertions, like the assertions regarding the revenue requirement methodology, entail a cost of service analysis.¹⁰ The Commission's substantive rules expressly prohibit a cost of service analysis in the public interest inquiry.¹¹

C. Response to Points of Error Nos. 4 and 5:

The West Travis County PUA did not have disparate bargaining power because Travis County MUD No. 12 had alternative means of service and had an arms-length relationship with the Travis County MUD No. 12

The evidence supports the finding that the West Travis County PUA did not have disparate bargaining power. First, the Travis County MUD No. 12 has alternative means of service because nothing precluded it from building its own treatment facility. Additionally, the Travis County MUD No. 12 has not provided credible evidence on whether building its own treatment facility is

⁵ See 16 TAC § 24.129(3).

⁶ See generally Direct Testimony of Jay Joyce, Travis County MUD No. 12 Ex. 2 at 12-14, 16-18, 21.

⁷ Staff Ex. 1 at 10; West Travis County PUA Ex. 3 at 23-24.

⁸ See 16 TAC § 24.133(b).

⁹ West Travis County PUA Ex. 3, Attachment F at Bates No. 202 and Attachment G at Bates No. 205-06.

¹⁰ Staff Ex. 1 at 11; West Travis County PUA Ex. 3 at 25-26.

¹¹ See 16 TAC § 24.133(b).

cost prohibitive. Second, the West Travis County PUA and the Travis County MUD No. 12 had an arms-length relationship. Notably, the protested rates charged to the Travis County MUD No. 12 are lower than the rates that the Travis County MUD No. 12 initially agreed to in the Water Services Agreement with the LCRA.¹² The West Travis County PUA needed the Travis County MUD No. 12 as a customer due to excess capacity.¹³ This need is consistent with the West Travis County PUA's conduct towards the Travis County MUD No. 12. For example, prior to adopting the protested rates, the West Travis County PUA held several meetings so that its wholesale customers could provide input on the protested rates.¹⁴ The Travis County MUD No. 12 sent a representative to four of these meetings.¹⁵ Additionally, West Travis County PUA offered, but the Travis County MUD No. 12 did not accept, to reduce the Travis County MUD No. 12's maximum capacity. Thus, the evidence belies the Travis County MUD No. 12's assertion that the West Travis County PUA had disparate bargaining power.

III. Conclusion

The Travis County MUD 12's request for rehearing should be denied because it raises previous issues that were considered and rejected by the Commission. The evidence supports the finding that the protested rates do not adversely affect the public interest.

¹² Compare West Travis County PUA Ex. 3 at Attachment G at Bates No. 205-06 (monthly charge of \$8,140.89 and volumetric rate of \$2.11 per 1,000 gallons) with Direct Testimony of Joseph A. DiQuinzio, Jr., Travis County MUD No. 12 Ex. 1 at JAD Exhibit 4 at Bates No. 150-51 (monthly charge of \$9,430 and volumetric rate of \$2.40 per 1,000 gallons).

¹³ See generally *id.* at 6 (discussing that the LCRA had excess capacity to serve the Highlands region).

¹⁴ Direct Testimony of Donald G. Rauschuber, West Travis County PUA Ex. 1 at 22-26.

¹⁵ *Id.* at 28.

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CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on December 30, 2015, in accordance with 16 TAC § 22.74.

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line.

Sam Chang