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Addendum StartPage: 0

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PUBLIC UTILITY COMMISSION
FILING CLERK

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

WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY'S OBJECTIONS TO
TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12'S
THIRD REQUEST FOR INFORMATION

COMES NOW the West Travis County Public Utility Agency ("*WTCPUA*"), by and through its attorneys of record, and files this Objections ("*Objections*") to Travis County Municipal Utility District No. 12's ("*MUD 12*") Third Request for Information ("*RFT*") to WTCPUA, and would respectfully show as follows:

I. PROCEDURAL HISTORY

MUD 12 served its Third RFIs to WTCPUA on September 18, 2014. Pursuant to Public Utility Commission ("*PUC*") Procedural Rules 22.144(d) and 22.4(a), objections are due within ten calendar days of MUD 12's receipt of the RFI. However, on September 26, 2014, WTCPUA and MUD 12 entered into a Rule 11 agreement, extending WTCPUA's deadline to file objections to September 30, 2014. Accordingly, these Objections are timely filed.

Counsel for WTCPUA negotiated diligently and in good faith with MUD 12, but the parties were unable to reach an agreement regarding some of the RFIs, necessitating the filing of these Objections. WTCPUA will continue to negotiate with MUD 12 on this and future RFIs, if

40

any, and to the extent that any agreement is subsequently reached, WTCPUA will withdraw such applicable Objections.

II. SPECIFIC OBJECTIONS

RFI 3-1 Identify any and all entities that provided assistance to the PUA in obtaining bond financing (for example, but not limited to, Assured Guaranty Municipal) or bond ratings services.

Objections:

WTCPUA objects to this request on the grounds that the provision of assistance by third persons to WTCPUA in obtaining bond financing or bond ratings for such bond issues is not relevant to the public interest criteria under P.U.C. SUBST. R. 24.133(a), and such information is not likely to lead to the discovery of admissible evidence that is relevant to the subject matter of the pending action, as required by Texas Rules of Civil Procedure (“*TRCP*”) 192.3(a).

Relevance. As clarified by the Administrative Law Judge (“*ALJ*”) in Order No. 2, the first phase of this case concerns “whether WTCPUA’s protested wholesale rates adversely affect the public interest.”¹ Discovery during this phase is limited to matters relevant to the evidentiary hearing on public interest.² The relevant inquiry in this proceeding is whether the protested rates violate one of the public interest criteria listed in P.U.C. SUBST. R. 24.133(a). By specifically listing the public interest criteria in P.U.C. SUBST. R. 24.133(a), and following that list with the prohibition in P.U.C. SUBST. R. 24.133(b) that the PUC shall not determine whether the protested rates adversely affect the public interest based on an analysis of the seller’s cost of service, the PUC has determined that cost of service-based information is not relevant.³ Here, the

¹ Order No. 2 Granting Motion for Clarification, at 1 (July 1, 2014), citing 30 Tex. Admin. Code §§ 291.133 and 291.134.

² P.U.C. SUBST. R. 24.132(b).

³ P.U.C. SUBST. R. 24.133(b).

identification of the entities that provided assistance to the WTCPUA⁴ in obtaining financing and ratings for the WTCPUA's Series 2012 and Series 2013 revenue bonds will not lead to the discovery of admissible evidence relevant to the public interest criteria inquiry under P.U.C. SUBST. R. 24.133(a) concerning the wholesale water treatment rates adopted by the WTCPUA's Board of Directors on November 21, 2013. Specifically, a list of such entities has no bearing on, or relation to, whether the WTCPUA's adopted wholesale water rates will impact the WTCPUA's financial integrity or operational capability⁵ or MUD 12's ability to continue to provide service to its retail customers,⁶ or whether the PUA has abused any alleged monopoly power in its provision of water treatment services to MUD 12.⁷

Further, the portion of this discovery request that relates to third parties assisting the WTCPUA in issuing its Series 2012 bonds is also irrelevant because the Series 2012 bonds were issued prior to WTCPUA's adoption of wholesale water treatment rates on *November 15, 2012, which predates the currently protested rates.*

RFI 3-2 Please refer to the "Acquisition, Water Supply, Wastewater Treatment and Conditional Purchase Agreement" by and among the West Travis County Public Utility Agency, the City of Bee Cave, Hays County, and West Travis County Municipal Utility District No. 5 (the "Acquisition Agreement") to respond to the following requests for information:

- a) Identify any section or requirements of the Acquisition Agreement which were recommended or required by entities which provided assistance to the PUA in obtaining bond financing (for example, but not limited to, Assured Guaranty Municipal) or bond ratings services.
- b) Please explain the purpose of any sections or requirements identified in response to Question 3-2(a) above.

⁴ After conducting a conference with counsel for MUD 12, said counsel indicated that "entities that provided assistance to the PUA" was limited to entities outside of the WTCPUA that were engaged by WTCPUA for the purpose of consulting the WTCPUA regarding bond financing and bond ratings.

⁵ P.U.C. SUBST. R. 24.133(a)(1).

⁶ P.U.C. SUBST. R. 24.133(a)(2).

⁷ P.U.C. SUBST. R. 24.133(a)(3).

- c) Please explain what role such entities had (if any) in the drafting of the Acquisition Agreement and provide any correspondence between the drafters of the Agreement, signatories to the Agreement, and such organizations.

Objections:

The WTCPUA objects to this request on the grounds that the recommendations by third persons providing bond financing or bond ratings services to the WTCPUA and its consultants regarding the drafting of Acquisition Agreement are not relevant to the public interest criteria under P.U.C. SUBST. R. 24.133(a), and such information is not likely to lead to the discovery of admissible evidence that is relevant to the subject matter of the pending action, as required by TRCP 192.3(a).⁸

Relevance. The WTCPUA repeats its objections to this request on the grounds of relevancy and incorporates its arguments related to relevance made in its objections above to RFI 3-1. Just as the identity of the entities assisting the WTCPUA in issuing bonds in 2012 and 2013 are irrelevant, the extent to which such entities recommended or required the WTCPUA to include provisions in the Acquisition Agreement, or even participated in the drafting of the Acquisition Agreement is also irrelevant to the public interest criteria under P.U.C. SUBST. R. 24.133(a) concerning the WTCPUA's November 21, 2013 wholesale water treatment rates.

RFI 3-3 Please refer to Attachment 1, which is the PUA's "FYE 2013 Budget Planning" spreadsheet, "Schedule 21 Wholesale Customer Count Projection" provided [t]o TCMUD No. 12 by Hays County in response to an earlier discovery request from TCMUD No. 12, Bates Stamped "Hays Co. - 494." Explain why the projected number of Living Unit Equivalents ("LUEs") for TCMUD No. 12 of 127 for FYE 2014 and 167 for FYE 2015 differs from the projected values of 165 and 340 for years 2014 and 2015, respectively,

⁸ After conducting a conference with counsel for MUD 12, said counsel indicated that "entities which provided assistance to the PUA" was limited to entities outside of the WTCPUA that were engaged by WTCPUA for the purpose of consulting the WTCPUA regarding bond financing and bond ratings.

appearing the "FYE2014 Wholesale Customer Minimum Bill Analysis," on page WTCPUA00005545.

Objections:

The WTCPUA objects to this request on the grounds that it is irrelevant to the public interest criteria under P.U.C. SUBST. R. 24.133(a).

Relevance. The WTCPUA repeats its objections to this request on the grounds of relevancy and incorporates its arguments related to relevance made in its objection above to RFI 3-1.

Supporting documents, such as drafts, of the WTCPUA's wholesale customer count projections are not relevant to the determination of whether there has been a change in methodology for purposes of the public interest test or to the evaluation of whether the rates charged to MUD 12 are unreasonably preferential, prejudicial, or discriminatory, compared to the wholesale rates the seller charges other wholesale customers. What is at issue here is the contents of the Final Report containing the Cost of Service and Rate Design Study that was used to set rates approved on November 21, 2013.

Further, the information requested in this RFI 3-3 seeks information related to the PUA's cost of service leading to the development of the wholesale water treatment rates. As set forth in the Objection to RFI 3-1, which is repeated and incorporated herein, the PUA's cost of service is legally irrelevant under P.U.C. SUBST. R. 24.133(b), and cannot lead to the discovery of admissible evidence.

RFI 3-5 **Please provide the proposed Engagement Letter to conduct a Cost of Service and Rate Design Study by Water Resources Management identified in the January 24, 2013 Minutes of the PUA Board (page WTCPUA0005159), along with any supporting proposal materials that originated from WRM and any documents by or between the PUA or its participants related to the engagement of Water Resources Management.**

Objections:

The WTCPUA objects to this request on the grounds that it is irrelevant to the public interest criteria under P.U.C. SUBST. R. 24.133(a). This request is also partially duplicative of a prior discovery request.

Relevance. The WTCPUA repeats its objections to this request on the grounds of relevancy and incorporates its arguments related to relevance made in its objection above to RFI 3-1. The engagement letter between WTCPUA and WRM, the supporting proposal materials, and documents by or between WTCPUA or its participants related to the engagement of WRM are not relevant to the WTCPUA's final wholesale water treatment rates adopted on November 21, 2013.

RFI 3-6 Please refer to Attachment 2, which is an email from Nelisa Heddin to several individuals including PUA Manager Don Rauschuber, dated May 10, 201[3] that was provided to TCMUD No. 12 by Hays County in response to an earlier discovery request from TCMUD No. 12, Bates stamped "Hays Co. – 441." As produced by Hays County, that email contains as an attachment a 110 page document titled "05 10 13 DRAFT Rate Study Model – Volumetric Rates.pdf." Page 59 of 110 of that document is "Schedule 26 – 2014 System-Wide Cost Allocation" which is Bates stamped "Hays Co. – 500." A copy of that page is included in Attachment 2.

- a) Admit or deny that page 59 is indeed a page from the document titled "05 10 13 DRAFT Rate Study Model – Volumetric Rates.pdf" attached to Nelisa Heddin's email dated May 10, 201[3].
- b) If the PUA contends that page 59 is not a page from the document titled "05 10 13 DRAFT Rate Study Model – Volumetric Rates.pdf" attached to Nelisa Heddin's email dated May 10, 201[3], please provide a copy of that email attachment or if previously provided [by] the PUA, identify the Bates page range where the document may be found.
- c) If the PUA contends that page 59 is not a page from the document titled "05 10 13 DRAFT Rate Study Model – Volumetric Rates.pdf" attached to Nelisa Heddin's email dated May 10, 201[3], please identify the document from which this page is taken and provide a true and correct copy of that document.

- d) Please refer to Schedule 26, which is on page 59 of 110 provided as part of Attachment 2 and provide any documents supporting the 9% allocated water loss for TCMUD No. 12 as shown in Schedule 26.

Objections:

The WTCPUA objects to this request on the grounds that it is irrelevant to the public interest criteria under P.U.C. SUBST. R. 24.133(a).

Relevance. The WTCPUA repeats its objections to this request on the grounds of relevancy and incorporates its arguments related to relevance made in its objection above to RFI 3-1. A specific water loss percentage is part of the WTCPUA's cost of service, and based upon P.U.C. SUBST. R. 24.133(b), is not relevant to the public interest criteria analysis.

RFI 3-7 **What is the PUA's assumed raw water loss percentage allocated to TCMUD No. 12 for water transported between the LCRA intake point and the water treatment plant? Please provide any documents supporting that raw water loss assumption. If the assumed percentage for raw water loss has changed or was different as certain times, please identify each assumed raw water loss percentage and the dates during which that assumed percentage was used.**

Objections:

The WTCPUA objects to this request on the grounds that it is irrelevant to the public interest criteria under P.U.C. SUBST. R. 24.133(a).

Relevance. The WTCPUA repeats its objections to this request on the grounds of relevancy and incorporates its arguments related to relevance made in its objection above to RFI 3-1. A specific water loss percentage is part of the WTCPUA's cost of service, and based upon P.U.C. SUBST. R. 24.133(b), is not relevant to the public interest criteria analysis.

RFI 3-8 **What is the PUA's assumed treated water loss percentage allocated to TCMUD No. 12 for water transported between the water treatment plant and TCMUD No. 12's delivery point? Please provide any documents supporting that treated water loss assumption. If the assumed percentage for treated water loss has changed or was different as certain times, please**

identify each assumed treated water loss percentage and the dates during which that assumed percentage was used.

Objections:

The WTCPUA objects to this request on the grounds that it is irrelevant to the public interest test under P.U.C. SUBST. R. 24.133(a).

Relevance. The WTCPUA repeats its objections to this request on the grounds of relevancy and incorporates its arguments related to relevance made in its objection above to RFI 3-1. A specific water loss percentage is part of the WTCPUA's cost of service, and based upon P.U.C. SUBST. R. 24.133(b), is not relevant to the public interest criteria analysis.

RFI 3-9 Please see Attachment 3, which is Page 9 from a May 30, 2014 invoice from Lloyd Gosselink Rochelle & Townsend, P.C., provided by Hays County in response to an earlier discovery request from TCMUD No. 12 and Bates stamped "Hays Co. – 1979." Please provide the "spreadsheet of wholesale customer contracts" identified in that invoice. If this spreadsheet has previously been produced by a party to this proceeding, please identify the relevant discovery response and pages.

Objection:

The WTCPUA objects to this request on the grounds that it is irrelevant to the public interest criteria under P.U.C. SUBST. R. 24.133(a).

Relevance. The WTCPUA repeats its objections to this request on the grounds of relevancy and incorporates its arguments related to relevance made in its objection above to RFI 3-1. Documents created after the WTCPUA adopted its wholesale water treatment rates on November 21, 2013 are not relevant to the public interest test criteria. Further, the contents of the document do not pertain to the wholesale water treatment rates adopted by the WTCPUA on November 21, 2013.

Withholding Statement:

Certain information responsive to this RFI 3-9 is being withheld under the Attorney-Client Privilege. However, because the WTCPUA is also objecting on the grounds of relevance, a privilege log is not being produced at this time, pursuant to P.U.C. PROC. R. 22.144(d)(3).

RFI 3-10 Please see Attachment 4, which is a May 29, 2014 invoice from Nelisa Heddin Consulting provided by Hays County in response to an earlier discovery request from TCMUD No. 12, and Bates stamped "Hays Co. – 2015." Please provide materials prepared to "determine projected revenue shortfall," as identified in the invoice. If this invoice has previously been produced by a party to this proceeding, please identify the relevant discovery response and pages.

Response:

After a conference between counsel for WTCPUA and counsel for MUD 12 regarding this discovery request, counsel for MUD 12 indicated that WTCPUA no longer needed to respond to this discovery request.

RFI 3-11 Please provide any studies or documents which sought to estimate the market value of the system which the PUA acquired from the LCRA prior to the PUA's acquisition.

Objections:

The WTCPUA objects to this request on the grounds that studies or documents estimating the market value of the WTCPUA's water system are irrelevant to the public interest criteria under P.U.C. SUBST. R. 24.133(a).

Relevance. The WTCPUA repeats its objections to this request on the grounds of relevancy and incorporates its arguments related to relevance made in its objection above to RFI 3-1. Documents regarding the market value of the WTCPUA water system go to the costs of such system, which is directly related to the WTCPUA's cost of service. The WTCPUA's cost

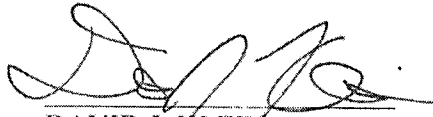
of service, based upon P.U.C. SUBST. R. 24.133(b), is not relevant to the public interest criteria analysis.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, West Travis County Public Utility Agency requests that these Objections be sustained and West Travis County Public Utility Agency be relieved from responding to Travis County Municipal Utility District No. 12's RFIs 3-1 through 3-3, 3-5, 3-6(d), 3-7 through 3-9, and 3-11. West Travis County Public Utility Agency also requests any other relief to which it may show itself justly entitled.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &
TOWNSEND, P.C.**
816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5800
(512) 472-0532 (Fax)



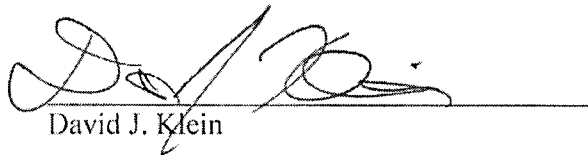
DAVID J. KLEIN
State Bar No. 24041257

GEORGIA CRUMP
State Bar No. 05185500

**ATTORNEYS FOR WEST TRAVIS COUNTY
PUBLIC UTILITY AGENCY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by fax, e-mail, hand-delivery and/or regular, first class mail on this 30th day of September, 2014, to the parties of record.


David J. Klein