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

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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 NO. 5	§	ADMINISTRATIVE HEARINGS

TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12'S
MOTION TO COMPEL THE WEST TRAVIS COUNTY
PUBLIC UTILITY AGENCY RESPONSES TO TCMUD 12'S
THIRD REQUESTS FOR INFORMATION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Travis County Municipal Utility District No. 12 ("TCMUD 12"), files this Motion to Compel the West Travis County Public Utility Agency ("WTCPUA") to respond to TCMUD 12's Third Request for Production. Pursuant to SOAH Order No. 4 and PUC PROC. R. 22.144, this Motion is timely filed.

I. BACKGROUND

TCMUD 12 propounded its Third Requests for Information on WTCPUA on September 18, 2014 and WTCPUA filed its Objections one day late on September 30, 2014, by agreement of WTCPUA and TCMUD 12. This Motion to Compel is timely filed on Tuesday, October 7, 2014, five working days after the receipt of the Objections.

For the purposes of brevity and to facilitate review of the issues presented, RFPs 3-2 and 3-3 have been addressed together as have RFPs 3-6 through 3-8.

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II. MOTION TO COMPEL

A. TCMUD 12 RFP 3-1 and 3-2

- 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.
- 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.
 - (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.

WTCPUA’s Objections. The WTCPUA has objected to these RFPs on the grounds of relevance claiming that cost of service based information is not relevant to a public interest proceeding. In addition, the WTCPUA claims that the information requested will not lead to discovery of admissible evidence relevant to the public interest inquiry.

TCMUD 12’s Response to Relevance Objection. The PUC Procedural Rules, as well as the Texas Rules of Civil Procedure, establish a wide scope for discovery. PUC PROC. R. 22.141(a) provides:

Scope. Parties may obtain discovery regarding any matter, not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding.

The Texas Rules of Civil Procedure provide for a similar broad scope of discovery:

A party may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.¹

The scope of discovery is wider than the scope of what is admissible at a hearing, so that discovery may be had of even inadmissible evidence if the information sought is "reasonably calculated to lead to the discovery of admissible evidence."² The Texas Supreme Court has stated that the Texas Rules of Civil Procedure define the general scope of discovery as "any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is 'reasonably calculated to lead to the discovery of admissible evidence.'"³

These requests seek the identities of the entities that assisted the WTCPUA with its Bond issues and whether those entities recommended or required certain terms in the Acquisition Agreement. The Acquisition Agreement defines the relationship of the WTCPUA and the three different entities that comprise the WTCPUA. The entities that assisted with the WTCPUA's Bond financing have an incentive to include provisions in the Acquisition Agreement to protect the WTCPUA's financial position in order to protect the revenues used to protect the Bond issuances. Certain provisions of the Acquisition Agreement, however, address market entry and participation in the market by entities other than the WTCPUA and its participants. See, e.g. Section 7.07 (h)(No Competition) of the Acquisition Agreement.⁴ These requests, therefore, seek information that could allow the discovery of admissible evidence on the issue of abuse of monopoly power. Accordingly, these objections should be overruled for these reasons.

B. TCMUD 12 RFP 3-3

3-3 Please refer to Attachment 1, which is the PUA's "FYE 2013 Budget Planning" spreadsheet, "Schedule 21 Wholesale Customer Count Projection" provided To TCMUD No. 12 by Hays County in response to an earlier discovery request from TCMUD No. 12,

¹ TEX. R. CIV. P. 192.3

² P.U.C. PROC. R. 22.141(a).

³ *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) citing TEX.R. CIV. P. 192.3(a); and *Eli Lilly & Co. v. Marshall*, 850 S.W.2d 155, 160 (Tex.1993).

⁴ Attachment C to TCMUD 12's Original Petition, page 20.

Bates Stamped "Hays Co. – 494."⁵ 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, appearing the "FY2014 Wholesale Customer Minimum Bill Analysis," on page WTCPUA00005545.

WTCPUA's Objections. The WTCPUA has objected to this RFP on the grounds of relevance claiming that cost of service based information is not relevant to a public interest proceeding and on the grounds that drafts of documents are not relevant. The WTCPUA incorporated by reference its relevance objection made in response to RFP 3-1.

TCMUD 12's Response to Relevance Objection. TCMUD 12 incorporates its response to the WTCPUA's relevance objection to RFP 3-1 above.

This RFI does not address the WTCPUA's cost of service, but rather, it addresses the number of Living Unit Equivalents the WTCPUA has assumed TCMUD 12 will be serving. In other words, it addresses capacity – not cost of service. This RFI goes directly to the issues of change of methodology and abuse of monopoly power. The methodology for determining the capacity projections for the two documents referenced in this RFI appears to be different. In addition, the capacity on the Water System that has previously been paid for by TCMUD 12 directly affects TCMUD 12's ability to obtain an alternative supplier and compromises TCMUD 12's negotiating or bargaining power, both of which are relevant considerations under PUC SUBST. R. 24.133. For these reasons, this RFI is reasonably calculated to lead to the discovery of admissible evidence concerning changes to methodology and abuse of monopoly power.

The WTCPUA also objects on the grounds that these documents are drafts. This is not a valid legal objection. Furthermore, there is nothing on page WTCPUA00005545 to state that the information is in draft form. Furthermore, the information on that page is identical to the information produced by the WTCPUA in response to TCMUD RFP 2-2 on page WTCPUA00009767, which was produced by the WTCPUA as the final version of that document. At the time this request was issued on September 18, 2014, TCMUD 12 did not have in its possession page WTCPUA00009767 which was produced by the WTCPUA on October 2, 2014.

⁵ The documents produced by Hays County were not numbered and were Bates Stamped by TCMUD No. 12 in the order in which they were provided to TCMUD No. 12.

For the reasons set out therein, these objections should be overruled.

C. TCMUD 12 RFP 3-5

- 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.

WTCPUA's Objections. The WTCPUA has objected to this RFP on the grounds of relevancy claiming that the documents sought are not relevant to the final wholesale water treatment rates. The WTCPUA incorporated by reference its relevance objection made in response to RFP 3-1.

TCMUD 12's Response to the WTCPUA's Objection. TCMUD 12 incorporates its response to the WTCPUA's relevance objection to RFP 3-1 above.

This request seeks information on how the WTCPUA framed the assignment given to Water Resources Management and any goals or parameters set by the WTCPUA on Water Resources Management prior to the Rate Study. This directly addresses the Water Resources Management's autonomy, whether the WTCPUA unduly influenced the Rate Study through its market position, and discrimination between wholesale customers, all of which may lead to the discovery of admissible evidence relevant to the public interest inquiry, specifically the abuse of monopoly power. For the reasons set out therein, these objections should be overruled.

D. TCMUD 12 RFP 3-6, 3-7, and 3-8

- 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, 2014 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, 2014.

(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, 2014, please provide a copy of that email attachment or if previously provided the PUA, identify the Bates page range where that 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, 2014, 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 on Schedule 26.

- 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 at certain times, please identify each assumed raw water loss percentage and the dates during which that assumed percentage was used.
- 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 at certain times, please identify each assumed treated water loss percentage and the dates during which that assumed percentage was used.

WTCPUA's Objections. The WTCPUA objects to each of requests on the grounds that they are irrelevant to the public interest criteria in that a specific water loss percentage is part of the WTCPUA's cost of service. The WTCPUA incorporated by reference its relevance objection made in response to RFP 3-1.

TCMUD 12's Response the WTCPUA's Objection. TCMUD 12 incorporates its response to the WTCPUA's relevancy objection to RFP 3-1 above.

These requests address both raw and treated water loss assumptions by the WTCPUA. The water loss assumptions are relevant to this proceeding not as a cost of service input, but to determine what WTCPUA is charging TCMUD 12 under the contract and whether the inclusion of charges for “lost water” represents a change in methodology under PUC SUBST. R. 24.133. For the reasons set out therein, these objections should be overruled.

E. TCMUD 12 RFP 3-9

- 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.

WTCPUA’s Objections. The WTCPUA objected to this request on the grounds that it is not relevant in that it relates to documents created after the WTCPUA adopted the rates in question in this proceeding and does not pertain to the wholesale water treatment rates challenged by this proceeding. In addition, the WTCPUA asserts a claim of Attorney-Client Privilege. The WTCPUA incorporated by reference its relevance objection made in response to RFP 3-1.

TCMUD 12’s Response the WTCPUA’s Objection. TCMUD 12 incorporates its response to the WTCPUA’s relevancy objection to RFP 3-1 above.

The document sought addresses the WTCPUA’s wholesale customer contracts. The public interest inquiry rules explicitly allow for an examination of whether the protested rate is unreasonably preferential, prejudicial, or discriminatory, compared to the wholesale rates the seller charges other wholesale customers. The document sought is relevant in that it pertains to the WTCPUA’s contracts with other wholesale customers and the request is proper since it is reasonably calculated to lead to the discovery of admissible evidence. The fact that this document was created after the rates were set is immaterial to its relevancy because it may show

contract amendments prior to or contemporaneous with the rate change. The document contains information on wholesale customer contracts, which are germane to this proceeding.

The WTCPUA's relevance objection should be overruled and the WTCPUA should be required to file a privilege log for the documents it is withholding.

F. TCMUD 12 RFP 3-11

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 PUA's acquisition.

WTCPUA's Objections. The WTCPUA objected to this request on the grounds that it seeks information on the cost of the system purchased by the WTCPUA, which is not relevant to the public interest criteria. The WTCPUA incorporated by reference its relevance objection made in response to RFP 3-1.

TCMUD 12's Response the WTCPUA's Objections. TCMUD 12 incorporates its response to the WTCPUA's relevancy objection to RFP 3-1 above.

The public interest inquiry rule allows for consideration of whether the protested rate impairs the seller's ability to continue to provide service, based on the seller's financial integrity and operational capability. In addition, the public interest inquiry rule states that one of the factors to be considered as an abuse of monopoly power is whether the seller can reasonably demonstrate the changed conditions that are the basis for a change in rates. When asked about the changed conditions that formed the basis for the change in rates in an earlier RFI, the WTCPUA responded in part by listing as changed conditions: the fact that "the PUA learned, and became more fully aware, of the functional capabilities of the deficiencies of the Water System"; and that the PUA identified the need for, and in some instances made, repairs and expansion to the Water System that were needed to meet service commitments and applicable laws, and to operate the Water System more efficiently." This discovery request seeks information to establish a baseline from which the WTCPUA's claims of changed conditions related to the water system may be evaluated. As such, it is reasonably calculated to lead to the discovery of admissible evidence. The WTCPUA's relevance objection should be overruled


IV. CONCLUSION AND PRAYER

No hearing is required on this motion. PUC PROC. R. 22.144(e) states that "The presiding officer may rule on the motion to compel based on written pleadings without allowing additional argument." Should the ALJ grant any part of this Motion to Compel and overrule any of the WTCPUA's objections, TCMUD 12 requests that the ALJ set a date certain for the responsive documents to be produced. In light of TCMUD's 12 deadline to file its direct case on October 31, 2014, TCMUD 12 requests that the deadline be no later than 10 days from the date of the ALJ's order granting any part of this motion. For the reasons stated above, TCMUD 12 respectfully requests that this Motion to Compel be granted and it be granted any further relief to which it has shown it is entitled.

Respectfully Submitted,

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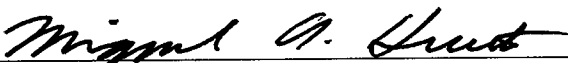
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ATTORNEYS FOR TRAVIS COUNTY
MUNICIPAL UTILITY DISTRICT NO. 12

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been sent to the parties in this case by facsimile on this 7th day of October, 2014.


Miguel A. Huerta