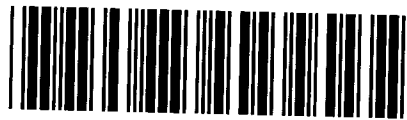


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# OPEN MEETING COVER SHEET

**MEETING DATE:** October 17, 2014

**DATE DELIVERED:** October 10, 2014

**AGENDA ITEM NO.:** 35

**CAPTION:** Docket No. 43081; SOAH Docket No. 473-15-0218 -  
Second 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, Application No.  
30812-A

**ACTION REQUESTED:** Discussion and possible action with respect  
to Draft Preliminary Order.

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14

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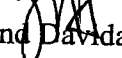
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## *Public Utility Commission of Texas*

TO: Chairman Donna L. Nelson  
Commissioner Kenneth W. Anderson, Jr.  
Commissioner Brandy D. Marty

All Parties of Record

FROM: Mark Hovenkamp and  Davida Dwyer, Commission Advising

RE: October 17, 2014, Open Meeting Agenda Item No. 35  
Draft Preliminary Order, P.U.C. Docket No. 43081; SOAH Docket No. 473-15-0218 - *Second 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*

DATE: October 10, 2014

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the October 17, 2014 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the October 17, 2014 open meeting.

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**SOAH DOCKET NO. 473-15-0218  
PUC DOCKET NO. 43081**

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

**DRAFT PRELIMINARY ORDER**

On July 31, 2014, Travis County Municipal Utility District No. 12 (TCMUD 12) filed its second petition with the Texas Commission on Environmental Quality (TCEQ) appealing the 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 (PUA Participants); its request for interim rates; and its request for expedited consolidation with Docket No. 42866, (former SOAH Docket No. 582-14-3382).

On September 1, 2014, functions relating to the economic regulation of water and sewer utilities transferred from the TCEQ to the Public Utility Commission of Texas (Commission),<sup>1</sup> and the Commission assumed jurisdiction over this docket.

Previously, on March 6, 2014, TCMUD 12 filed its first petition appealing wholesale water rates set by West Travis County Public Utility Agency (PUA), the City of Bee Cave, Texas, Hays County, Texas and West Travis County Municipal Utility District No. 5, (PUA Participants) for whom the PUA serves as an agent for the PUA participants (Docket No. 42866, SOAH Docket No. 582-14-3382). On June 11, 2014, a preliminary hearing was held in that rate

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<sup>1</sup> Act of May 13, 2013, 83rd Leg., R.S., ch. 170 (HB 1600), §2.96, 2013 Tex. Gen. Laws 725, 730; Act of May 13, 2013, 83rd Leg., R.S., ch. 171 (SB 567), §96, 2013 Tex. Gen. Laws 772.

appeal, and jurisdiction was established under Texas Water Code § 13.043(f). On May 28, 2014, TCMUD 12 received a notice from the West Travis County Public Utility Agency of a drought surcharge to be implemented effective July 2014. TCMUD 12's second petition in this docket appeals the rate change represented by the drought surcharge and pleads in the alternative that the second petition concerning the drought be heard on the rate because it is not a rate charged pursuant to a contract. In the alternative, if the PUA alleges a specific contractual provision under which it claims the drought surcharge arises, then TCMUD 12 will acquiesce in the second petition being heard as a public interest proceeding.

On September 15, 2014, the Commission issued an order referring this docket to the State Office Administrative Hearings (SOAH) and requesting that interested parties file a list of issues to be addressed in this proceeding. TCMUD 12, the PUA Participants, and Commission Staff timely filed their list of issues.

### **I. Issues to be Addressed**

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.<sup>2</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Does the Commission have jurisdiction to consider TCMUD 12's second petition under TEXAS WATER CODE §§ 11.036, 11.041, 12.013, and 13.043(f)? In answering this question, please address whether a drought surcharge is the type of rate that can be appealed.
2. If the Commission has jurisdiction under TEXAS WATER CODE § 11.041 or § 12.013, does TCMUD 12's second petition meet the requirements of P.U.C. SUBST. R 24.44, 16 Tex. Admin. Code § 24.44?

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<sup>2</sup> TEX. GOV'T CODE ANN. § 2003.049(e) (West 2000).

3. If the Commission has jurisdiction under TEXAS WATER CODE § 13.043(f), does TCMUD 12's second petition meet the requirements P.U.C. SUBST. R. 24.130, 16 Tex. Admin. Code § 24.130?
  - a. If so, is the drought surcharge a rate charged pursuant to a written contract between TCMUD 12 and the PUA Participants (whether by agreement of the parties or as resolved by court determination in accordance with P.U.C. SUBST. R. 24.131, 16 Tex. Admin. Code § 24.131)?
    - i. If the drought surcharge is a rate charged pursuant to a written contract, has TCMUD 12 met its burden of proof under P.U.C. SUBST. R. 24.136, 16 Tex. Admin. Code § 24.136, by demonstrating that the drought surcharge adversely affects the public interest by violating at least one of the public interest criteria listed in P.U.C. SUBST. R. 24.133(a), 16 Tex. Admin. Code § 24.133(a)?
      - a) If the drought surcharge does not affect the public interest, what are the bases for determining that the drought surcharge does not adversely affect the public interest, as required by P.U.C. SUBST. R. 24.134(a), 16 Tex. Admin. Code § 24.134(a)?
      - b) If the drought surcharge is a rate charged pursuant to a written contract and affects the public interest, what are the bases for determining that the drought surcharge adversely affects the public interest, as required by P.U.C. SUBST. R. 24.134(e), 16 Tex. Admin. Code § 24.134(e)?
    - ii. If the drought surcharge is not a rate charged pursuant to a written contract, have the PUA Participants met their burden of proof under P.U.C. SUBST. R. 24.136, 16 Tex. Admin. Code § 24.136, by showing that their cost of service supports imposition of the drought surcharge pursuant to P.U.C. SUBST. R. 24.131(c) and 24.135, 16 Tex. Admin. Code §§ 24.131(c) and 24.135?

4. Should interim rates be established pursuant to TWC § 13.043(h)? If so, what is the appropriate interim rate?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under TEX. GOV'T CODE ANN. § 2003.049(e).

## **II. Effect of Preliminary Order**

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the \_\_\_\_\_ day of October 2014.

PUBLIC UTILITY COMMISSION OF TEXAS

\_\_\_\_\_  
DONNA L. NELSON, CHAIRMAN

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KENNETH W. ANDERSON, JR., COMMISSIONER

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BRANDY D. MARTY, COMMISSIONER