



Control Number: 43081



Item Number: 9

Addendum StartPage: 0

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PUBLIC UTILITY COMMISSION
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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 §

BEFORE THE STAFF OF THE PUBLIC UTILITY COMMISSION
OF
ADMINISTRATIVE HEARINGS

**WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY'S
LIST OF ISSUES**

Pursuant to the Order of Referral of the Public Utility Commission ("PUC" or "Commission") issued September 15, 2014, requesting a list of issues to be addressed in this docket, West Travis County Public Utility Agency ("WTCPUA") files this List of Issues.

I. ISSUES TO BE DETERMINED

A. Parties.

Travis County Municipal Utility District No. 12 ("TCMUD 12" or "Petitioner") filed its second petition appealing rates of the WTCPUA purportedly "on behalf of itself and Travis County Municipal Utility Districts Nos. 11 and 13,"¹ but has failed to plead any facts that would indicate that Travis County Municipal Utility District No. 11 ("TCMUD 11") or Travis County Municipal Utility District No. 13 ("TCMUD 13") have authorized a petition to be filed on their behalf by TCMUD 12. Aside from mentioning TCMUD 11 and TCMUD 13 in the sections entitled "Overview" and "Identification of Parties," TCMUD 12 never again in the Second

¹ 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 ("Second Petition") at 1 (July 31, 2014).

9

Petition mentions either of these other two districts for whom it presumes to act. There are also no allegations pertaining to either of these two other districts regarding their standing to bring a complaint on their own or as represented by TCMUD 12.

Thus, the threshold issues to be determined in this docket are the authority of TCMUD 12 to act for anyone other than itself (specifically, TCMUD 11 and TCMUD 13), whether TCMUD 11 and TCMUD 13 have authorized TCMUD 12 to act on their behalf, and whether TCMUD 11 and TCMUD 13 have standing to bring a petition themselves or through a third party.

B. Jurisdiction.

WTCPUA denies that TCMUD 12 has established the jurisdiction of the Commission to hear its Second Petition under all the claimed statutory provisions. Petitioner has listed multiple provisions of the Texas Water Code and the Texas Local Government Code, without providing any allegations of facts that would activate the Commission's jurisdiction. Specifically, TCMUD 12 states that it brings its Second Petition pursuant to Texas Water Code §§ 11.036 and 11.041². However, neither of these provisions apply. Texas Water Code § 11.036 states:

(a) A person, association of persons, corporation, or water improvement or irrigation district having in possession and control any storm water, floodwater, or rainwater that is conserved or stored as authorized by this chapter may contract to supply the water to any person, association of persons, corporation, or water improvement or irrigation district having the right to acquire use of the water.³

The WTCPUA does not have in its possession or control any storm water, floodwater, or rainwater that is conserved or stored as authorized by Chapter 11 of the Texas Water Code. WTCPUA provides no such water to TCMUD 12; WTCPUA provides water treatment services

² Second Petition at 4.

³ TEX. WATER CODE ANN. § 11.036 (West 2008).

to water provided to it by TCMUD 12. Petitioner has appended to its Second Petition as Attachment G its Firm Water Contract with the Lower Colorado River Authority ("LCRA") pursuant to which it purchases its raw water from LCRA, not WTCPUA. This document belies the existence of any jurisdiction of its Petition under § 11.036, Texas Water Code.

Likewise, § 11.041 of the Texas Water Code is not applicable to the facts of this docket.

This section provides:

(a) Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present to the commission a written petition showing:

- (1) that he is entitled to receive or use the water;
- (2) that he is willing and able to pay a just and reasonable price for the water;
- (3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and
- (4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.⁴

Again, Petitioner has completely failed to present any basis for the Commission to take jurisdiction of its Second Petition under § 11.041 of the Texas Water Code. The WTCPUA does not own or control TCMUD 12's water supply. As shown by Attachment G to the Second Petition, the LCRA owns and controls such water supply, and sells the raw water from LCRA's supplies to TCMUD 12.⁵

⁴ TEX. WATER CODE ANN. § 11.014 (West 2008 & Supp. 2014).

⁵ In PUC Docket No. 42866 (TCMUD 12's first petition challenging wholesale water rates of WTCPUA), TCMUD 12 originally claimed jurisdiction under Texas Water Code §§ 11.036 and 11.041. TCMUD 12 later amended its petition in that docket to withdraw its claim of jurisdiction under these provisions.

Petitioner has also alleged, but failed to substantiate, the jurisdiction of the Commission under § 12.013, Texas Water Code. This section provides:

The utility commission shall fix reasonable rates for the furnishing of raw or treated water *for any purpose mentioned in Chapter 11 or 12 of this code.*⁶

As noted above, Petitioner has not plead any facts upon which provisions of Chapter 11 or 12 of the Water Code would apply to the relationship between WTCPUA and TCMUD 12, therefore, Petitioner has also failed to demonstrate the Commission's jurisdiction under § 12.013.

Petitioner alleges that the Commission obtains jurisdiction over its complaint pursuant to § 572.061(d) of the Texas Local Government Code. Chapter 572, Subchapter C of the Local Government Code, addresses the creation, powers, and authorities of public utility agencies. Subsection 572.061(a) requires a public utility agency to charge rates sufficient to produce revenues adequate to pay all expenses, pay principal and interest on debts, pay all sinking and reserve funds, and fulfill any agreements made with the holders of any obligations. Subsection 572.061(d) provides:

(d) Notwithstanding Subsection (a), the state reserves its power to regulate and control the rates and charges by a public utility agency.⁷

Subsection 572.061(d) does not constitute a new or independent grant of authority of the state over the rates and charges of a public utility agency. Instead, it preserves authorities that otherwise exist. Thus, the Commission does not gain jurisdiction over the rates of the WTCPUA by virtue of § 572.061(d); if such jurisdiction otherwise exists, it continues alongside the obligations of the public utility agency to charge rates sufficient to meet its obligations.

⁶ TEX. WATER CODE ANN. § 12.013(a) (West 2008 & Supp. 2014) (emphasis added).

⁷ TEX. LOC. GOV'T CODE ANN. § 572.061(d) (West 2005 & Supp. 2014).

Therefore, the basis for the Commission's jurisdiction over WTCPUA and the drought surcharge must be determined.

C. Rates Charged Pursuant to Written Agreement.

TCMUD 12 alleges that the drought surcharge is "an unauthorized charge under the Wholesale Water Services Agreement and the Transfer Agreement," and argues that its appeal of the "rate change" should be heard as part of a cost of service rate case.⁸ As noted in its Response filed with the Texas Commission on Environmental Quality ("TCEQ") on August 11, 2014, WTCPUA does not agree with TCMUD 12, and asserts that the drought surcharge was specifically contemplated and authorized by the Wholesale Agreement.⁹ TCMUD 12 tries to hedge its bets by alternatively pleading that "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 during a Public Interest proceeding."¹⁰ In order for the Commission to be able to appropriately proceed with the petition under the Commission's rules, TCMUD 12 should either agree that the drought surcharge is a rate charged pursuant to a written contract, or it should dispute that statement.

The recently-adopted rules of the Commission clearly state that when presented with a petition or appeal to review wholesale rates charged pursuant to a written contract, the Commission will forward the petition to the State Office of Administrative Hearings ("SOAH") to conduct an evidentiary hearing on whether the protested rates are adverse to the public interest.¹¹ However, if the seller and buyer do not agree that the protested rate is charged

⁸ Second Petition at 6.

⁹ WTCPUA Response at 8.

¹⁰ Second Petition at 2.

¹¹ P.U.C. SUBST. R. 24.131(b).

pursuant to a written contract, the administrative law judge (“ALJ”) “shall abate the proceedings until the contract dispute over whether the protested rate is part of the contract has been resolved by a court of proper jurisdiction.”¹² The ALJ cannot adjudicate a dispute as to whether the rates are charged pursuant to a written contract, but the ALJ can, and must, determine whether the parties disagree on this issue. If the parties disagree, the ALJ must abate the proceeding. Therefore, an issue to be determined by the ALJ is whether the parties agree on whether the protested rates are charged pursuant to a written contract.

D. Public Interest.

If the parties agree that the protested rates are charged pursuant to a written contract, then the only inquiry in the contested hearing is whether the protested rates adversely affect the public interest. This inquiry is to take place pursuant to the Commission’s rules, specifically P.U.C. SUBST. R. 24.132 and 24.133. In accordance with those rules, the Commission must determine whether the public interest criteria set forth in Rule 24.132(a) have been violated.

E. Issues to be Addressed.

In accordance with the foregoing, the following issues should be addressed:

1. Has TCMUD 12 been duly authorized by TCMUD 11 and TCMUD 13 to act on their behalf?
2. If TCMUD 12 has been authorized by TCMUD 11 and TCMUD 13 to act on their behalf, do TCMUD 11 and TCMUD 13 have standing to bring a complaint against the drought surcharge rate charged by WTCPUA? If so, have these two districts met the petition requirements of P.U.C. SUBST. R. 24.129, *et seq.*?
3. What is the basis for the Commission’s jurisdiction over WTCPUA and the protested drought surcharge?
4. Do the WTCPUA and TCMUD 12 agree as to whether the drought surcharge is a rate charged pursuant to a written contract?

¹² P.U.C. SUBST. R. 24.131(d).

5. If the Petitioner has alleged a statute that provides the Commission with jurisdiction over WTCPUA and the answer to Issue No. 4 is affirmative, then do the protested rates adversely affect the public interest after a review applying the public interest criteria pursuant to P.U.C. SUBST. R. 24.133(a)?

II. ISSUES NOT TO BE ADDRESSED

TCMUD 12 has requested the imposition of interim rates that would completely negate the drought surcharge set by the WTCPUA in response to identified drought conditions and revenue shortfalls. Petitioner has not alleged any facts that would form a reasonable basis for the roll-back, nor has it claimed any unreasonable financial harm to itself if the interim rates are not established. In addition, it is improper to change rates charged pursuant to a written contract in the absence of a finding that the protested rates adversely affect the public interest. Imposing interim rates prior to such a finding moots the two-step review that is required by the Commission's rules.

Petitioner has also requested expedited consolidation of its Second Petition with the petition currently proceeding at SOAH, PUC Docket No. 42866 (the "First Petition"). The only basis for such consolidation identified by Petitioner is the identity of the parties. However, TCMUDs 11 and 13 are not parties to Docket No. 42866.¹³ If TCMUDs 11 and 13 are named parties to the Second Petition, and the two Petitions are consolidated, then those entities would be joined in a contested case hearing in which they were not named as parties.

Additionally, the rates that are the subject of the two separate petitions filed by TCMUD 12 are completely different and have no relationship to each other. As noted in WTCPUA's Response to the Second Petition, filed herein on August 11, 2014, the drought surcharge adopted by the WTCPUA to be effective on July 1, 2014, is an increase only to the volumetric rate. For

¹³ A copy of Order No. 1 in the First Petition is attached hereto as Attachment A.

these reasons, consolidation of the two cases will unnecessarily confuse the unique issues and parties related to the two protested rates, which will unfairly prejudice the WTCPUA, will extend the time needed to complete the public interest hearing on the First Petition, and will not reduce the expenses for either party. These are two distinct rate cases, based upon independent and separate analyses. Therefore, the issues of interim rates and consolidation should not be considered by the ALJ in the contested hearing of this matter.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, West Travis County Public Utility Agency respectfully requests that the Commission issue a Preliminary Order that identifies the issues to be addressed and not to be addressed in a manner consistent with this filing, and for such other relief as to which it has shown itself to be entitled.

Respectfully submitted,

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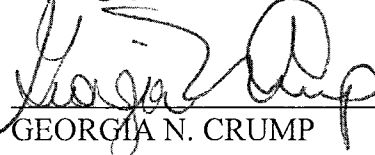
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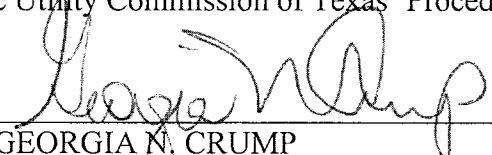
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ATTORNEYS FOR THE WEST TRAVIS
COUNTY PUBLIC UTILITY AGENCY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been submitted for filing at the Public Utility Commission of Texas on the 25th day of September, 2014, and served as provided for in the Public Utility Commission of Texas' Procedural Rules.



GEORGIA N. CRUMP

SOAH DOCKET NO. 582-14-3382
TCEQ DOCKET NO. 2014-0439-UCR

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

ORDER NO. 1
SETTING CASE SCHEDULE AND PROCEDURES

I. INTRODUCTION

On June 11, 2014, a preliminary hearing was held in this case. The jurisdiction of the Texas Commission on Environmental Quality (TCEQ) under Texas Water Code § 13.043(f) was proven. The Administrative Law Judge (ALJ) did not rule on other claimed, but disputed, legal bases for the Commission's jurisdiction because he saw no need to make that determination at this time. The ALJ's jurisdiction is not disputed.

The following appeared and were admitted as parties:

PARTY	REPRESENTATIVE
Travis County Municipal Utility District No. 12 (District 12)	Kay Trostle & Miguel Huerta
West Travis County Public Utility Agency (PUA)	David Klein & Stephanie Albright
City Of Bee Cave, Texas (City)	Jim Haley
Hays County, Texas (County)	did not appear
West Travis County Municipal Utility District No. 5 (District 5)	Randy Wilburn

PARTY	REPRESENTATIVE
Executive Director (ED)	Ron Olson & Jessica Gray
Office of Public Interest Counsel (OPIC)	Rudy Calderon

II. SCHEDULE

The following is adopted to govern this case:

DATE	EVENT
July 14, 2014	Discovery begins and responses to discovery requests are due in 30 days.
August 15, 2014	Deadline for requests for disclosure.
September 11, 2014	Prehearing conference to consider adjustments necessary due to transfer of jurisdiction from the Commission to the Public Utility Commission of Texas (PUC).
October 17, 2014, through October 31, 2014	District 12 is not required to respond to any discovery or motion. Any response deadline during this period is tolled.
October 31, 2014	Deadline for District 12 to prefile its direct case in writing, including all testimony and exhibits.
December 5, 2014, through December 19, 2014	Parties other than District 12 and the ED are not required to respond to any discovery or motion. Any response deadline during this period is tolled.
December 19, 2014	Deadline for parties other than District 12 and the ED to prefile their direct cases in writing, including all testimony and exhibits.
December 22, 2014, through January 1, 2015	Hiatus for holidays.

DATE	EVENT
January 23, 2015, through February 6, 2015	The PUC Staff is not required to respond to any discovery or motion. Any response deadline during this period is tolled.
February 6, 2015	Deadline for PUC Staff to prefile its direct cases in writing, including all testimony and exhibits.
March 6, 2015	Discovery to District 12 on direct case ends. Deadline to file motions for summary disposition.
March 6, 2015, through March 20, 2015	District 12 is not required to respond to any discovery or motion. Any response deadline during this period is tolled.
March 13, 2015	Deadline to file objections to and motions to strike any prefiled direct-case evidence.
March 16, 2015	Deadline to file responses to motions for summary disposition.
March 20, 2015	Deadline for District 12 to file rebuttal evidence.
March 20, 2015	Discovery ends for non-rebuttal discovery.
March 27, 2015	Deadline to propound discovery concerning District 12's rebuttal. Objections to this discovery are due within 10 days, and responses to objections are due ten days after objections are served.
March 27, 2015	Deadline to file responses to objections and motions to strike direct-case prefiled evidence.
April 10, 2015	Deadline to conduct depositions.
April 12, 2015	Prehearing conference to rule on objections to prefiled evidence and other pending matters.
April 20, 2015	Hearing on the merits of case begins.
April 24, 2015	Estimated end of the hearing on the merits.

The above schedule reflects the ALJ's understanding of the written proposal submitted by the parties. To the extent it is inaccurate or modification is warranted, the parties should submit a joint motion to amend it.

III. HEARING AND PREHEARING DATES AND LOCATION

The hearing on the merits will convene at 9:00 a.m., April 20, 2015, at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Unless the Parties are notified otherwise, the hearing on the merits will continue each workday until it has concluded. Given the complexity and anticipated length, appearing at the hearing on the merits by telephone is not practical and will not be allowed.

The September 11, 2014, and April 12, 2015, preliminary hearings will be held at 10:00 a.m., at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas.

IV. APPLICABLE RULES

This case is governed by the rules of Commission, as supplemented by SOAH's procedural rules, until and if ordered otherwise after jurisdiction transfers to the PUC.

V. DISCOVERY

Discovery shall be conducted according to the Texas Rules of Civil Procedure (TRCP), as supplemented by TCEQ's and SOAH's discovery rules. 30 Tex. Admin. Code § 80.151 and 1 TAC § 155.251. The TRCP shall be interpreted consistent with chapter 80 of the TCEQ's rules, the Texas Water Code, the Texas Health and Safety Code, and the Administrative Procedure Act. 30 Tex. Admin. Code § 80.151. Pursuant to 1 Tex. Admin. Code § 155.251(c)(2),

discovery documents shall be served on the other Parties but shall not be filed with the ALJ unless such materials are the subject of a discovery dispute.

The Parties are expected to attempt to resolve discovery disputes; however, disputes that cannot be resolved should be brought to the ALJ's attention in a motion to compel. Any such motion shall include a copy of any discovery correspondence necessary for an informed ruling on the dispute.

The total time for each party to take oral depositions may not exceed 50 hours. Each may divide its total time among witnesses as it sees fit. The total number of written interrogatories that any party may serve on any other party may not exceed 25. 30 Tex. Admin. Code § 80.152(c).

VI. PLEADINGS

Unless a party seeks a hearing and the motion is granted, the ALJ will rule on motions based on the written pleadings. If oral argument is granted, it shall be conducted by telephone conference, unless the ALJ orders otherwise.

The Parties may fax pleadings to SOAH at 512-322-2061. If a deadline is approaching and a party cannot get a fax through for reasons beyond its control, the party should call SOAH's Docketing Division, 512-475-4993, to discuss the problem.

When filing or serving documents, the parties shall use the service list attached to this order and attach a copy of that list to each filing. A party may be served through its fax number or email included on the service list.

VII. PREFILED EVIDENCE

Every party shall file its direct-case evidence in writing before the hearing (prefile) as required by the case schedule. One copy shall be served on the representative of every other party, and one copy shall be filed with the ALJ. The prefiled evidence should include all testimony and other evidence that the party plans to offer during its direct case. Every page of every prefiled document shall be appropriately numbered to allow easy identification and reference. Rebuttal evidence and documents used for impeachment or rebuttal purposes need not be prefiled.

Non-rebuttal and non-cross-examination evidence that is not prefiled will not be admitted unless the offering party shows that there is good cause to do so and that the other parties will not be placed at an unreasonable disadvantage by the late offering. Good cause will be determined primarily based the offering party's showing that a need for the evidence could not have been reasonably anticipated or that the evidence was inadvertently not prefiled due to an error. The party with the burden of proof is cautioned not to attempt to gain a strategic advantage by saving evidence for rebuttal that is more properly part of its direct case, since that might lead to a motion for summary disposition.

Prefiled testimony shall be written as if the questions were asked by the party's lawyer and answered by the witness. Each witness must be called to testify and adopt the prefiled testimony under oath. The testimony should then be offered as an exhibit. Every other party will have an opportunity to cross-examine the witness unless that opportunity has been waived. If all other parties have waived cross-examination, the witness's testimony shall be admitted without the witness appearing.

When a party profiles testimony, it shall indicate the sequence in which it intends to call its witnesses. If there is a need to deviate from that order, the ALJ and the other parties shall be

informed at least 24-hours before the witness is called to testify unless the ALJ permits shorter notice.

At the hearing, two copies of every exhibit, which will be referred to as the "Record Set" and the "Appeal Set," shall be provided to the court reporter before the hearing starts, so that the court reporter can mark them without delaying the hearing.

VIII. OPEN GOVERNMENT

The ALJ intends to strictly limit admission of evidence under seal and closing of the hearing on the merits to the public. The parties shall negotiate prior to the hearing and attempt to agree on redacted versions of confidential documents that can be admitted or to stipulate to facts to which they pertain. If the parties are unable to reach an agreement, the ALJ will resolve the dispute at the hearing in a session closed to the public.

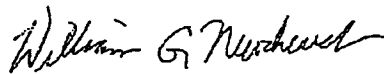
IX. TRANSCRIPT

For any proceeding set to last longer than one day, a court reporter is generally required. 1 Tex. Admin. Code § 155.423(b). Upon their own motion, judges may request an original and two copies of a transcript of a proceeding and may require the applicant to pay for the transcript in advance subject to reimbursement from other parties upon assessment of costs. 30 Tex. Admin. Code § 80.23 (b)(4) and (5).

The ALJ estimates that the hearing on the merits will last longer than one day. District 12 shall arrange for and pay a court reporter to record and transcribe the hearing on the merits and deliver the original transcript to the ALJ and two copies to the TCEQ's Chief Clerk within two weeks after the end of the hearing. The delivered transcript shall also include electronic copies thereof on disc in text format. When the Commission or the PUC makes a final

decision in this case, the costs of the recording and transcription shall be allocated among the parties in accordance with 30 Tex. Admin. Code § 80.23.

SIGNED June 12, 2014.



**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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STYLE/CASE: WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY
SOAH DOCKET NUMBER: 582-14-3382
REFERRING AGENCY CASE: 2014-0439-UCR

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

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CITY OF BEE CAVE
