



Control Number: 49225



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PUC DOCKET NO. 49225

**PETITION BY OUTSIDE CITY
RATEPAYERS APPEALING THE
WATER RATES ESTABLISHED BY
THE CITY OF CELINA**

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**BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS**

**MOTION FOR REFERRAL TO SOAH AND
REQUEST FOR INTERIM RATES**

TO THE HONORABLE COMMISSION:

COME NOW, the Outside City Ratepayers (“Petitioners”) and file this Motion to refer this docket to the State Office of Administrative Hearings (“SOAH”) and to set interim rates.

I. BACKGROUND

1. On November 13, 2018, the City Council of the City of Celina (“City”) adopted City Ordinance 2018-66 increasing water and wastewater rates for Petitioners. These rates went into effect on January 1, 2019.

2. Petitioners filed their Original Petition on February 14, 2019, and filed an Amended Petition on March 15, 2019, with the Commission.

3. On April 5, 2019, the City filed a Notice of Corrected Effective Date of the rates that are the subject of Ordinance 2018-66.

4. On June 27, 2019, Petitioners and Collin County Municipal Utility District No. 1 (the “District”) filed a Joint Motion to Consolidate this case with Docket 49448, to Align Parties, and to Designate a Party Representative. To date, the Commission has not taken action on this filing.

5. On July 7, 2019, the City filed a Motion to Transfer the Case to the State Office of Administrative Hearings.

6. On November 14, 2019, in Docket 49448, the Commission granted the City’s Appeal of the Administrative Law Judge’s denial of its Motion to Dismiss Collin County

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Municipal Utility District No. 1's Appeal of Water and Wastewater Rates of the City of Celina, effectively dismissing that docket.

II. JURISDICTION

A. Referral to the State Office of Administrative Hearings

Pursuant to 16 Tex. Admin. Code ("TAC") § 22.207, Petitioners request that the Commission refer this Docket to SOAH.¹ After the Commission's ruling in Docket 49448 that effectively dismissed the claim by the District, the only path for setting just and reasonable rates is through this Docket. This appeal has been pending since February 14, 2019, and Petitioners filed a Joint Motion to Consolidate on June 27, 2019. Given the Commission's ruling in Docket 49448, that Joint Motion to Consolidate is now moot. Further, this contested docket is between the Petitioners and City, so referral to SOAH is proper under PUC Rules.²

B. Interim Rates

Pursuant to Texas Water Code ("TWC") § 13.043(h) and 16 TAC § 24.37, Petitioners request that the Commission set interim rates during the pendency of this rate appeal until such time as the Commission renders a final decision.³ The Commission may establish interim rates under its original or appellate jurisdiction where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers; unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the utility.⁴ In fact, the City's proposed rate charges Petitioners an arbitrary 1.5 times more than the rate that the City charges in-City customers. The Commission has previously found the use of this type of multiplier to calculate rates for outside-city customers to be discriminatory, unjust, unreasonable, and not allowed under Texas law.⁵

¹ 16 TAC § 22.207.

² *Id.*

³ TWC § 13.043(h); 16 TAC § 24.37.

⁴ 16 TAC § 24.37(d).

⁵ *In the Matter of the Complaints of Springwoods MUD, et al against the City of Austin*, Docket Nos. 7144-M, 7439-D, 7518-M, and 7466-M, (May 23, 1989) Finding of Fact No. 45.f., p. 23 ("Different Treatment of inside-

The City adopted the rates pursuant to City Ordinance 2018-66, which shows definitively that the City applied a 150% multiplier to in-City rates to establish its out-of-City rates.⁶ For example, the in-City monthly minimum charge effective January 1, 2019 for inside City customers with a ¾" meter was \$23.84; for outside City customers the monthly minimum charge was \$35.77.⁷ Clearly, the City's rates are discriminatory. For that reason alone, the Commission should set interim rates to protect the Petitioners from the City's unjust and unreasonable rates.

In addition, the City failed to provide adequate notice of the proposed rate increase as required by TWC § 13.043(i), and the rate increases placed an additional, unfair economic hardship on the Petitioners. The City's increased rates placed an unfair economic hardship on Petitioners because the Petitioners did not have an opportunity to adjust consumption.

Based on prior rulings that outside city rates based on arbitrary multipliers are discriminatory, the Commission will likely completely eliminate or significantly reduce the City's proposed rate increase; and the Commission will require the City to refund to Petitioners any additional revenue collected during the pendency of this matter. The burden of unjust rates should not rest on the individual ratepayers. Petitioners hereby request the Commission establish interim rates for water and wastewater services at the same levels as the rates charged to the City retail residential customers within the City limits.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioners respectfully pray that the Commission:

1. Refer this Appeal to SOAH for a contested case proceeding under TWC § 13.043(b) and require the City to show through a cost of service study that its rates are just and reasonable

city and outside-city municipal utility district is discriminatory and illustrates the inequitable aspects of the distance factor.") attached as **Exhibit A**.

⁶ See First Amended Petition Appealing Water and Wastewater Rates, Exhibit B, Ordinance No. 2018-66, City of Celina, Texas November 13, 2018, Attachment Exhibit B (March 15, 2019) (Amended Petition); *see also* Amended Petition, Appendix Fee Schedule, City of Celina Code of Ordinances <https://z2.franklinlegal.net/franklin/Z2Browser2.html?showset=celinaset> (last visited March 15, 2019), Attachment Exhibit C (March 15, 2019).

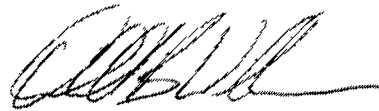
⁷ *Id.* at 1.

and based upon the City's actual cost of providing service, in compliance with the Texas Water Code and the Commission Rules;

2. Set interim rates at the same rates that are charged to the City's retail residential customers within the City limits, until such time as the Commission makes a final decision on the appeal; and

3. Grant such other and further relief as the Petitioners may show themselves to be entitled.

Respectfully submitted,



Randall B. Wilburn

Randall B. Wilburn
State Bar No. 24033342
Helen S. Gilbert
State Bar No. 00786263
GILBERT WILBURN PLLC
7000 North MoPac Blvd., Suite 200
Austin, Texas 78731
Telephone: (512) 535-1661
Facsimile: (512) 535-1678

John J. Carlton
State Bar No. 03817600
Kelli A. N. Carlton
State Bar No. 15091175
THE CARLTON LAW FIRM, P.L.L.C.
4301 Westbank Drive, Suite B-130
Austin, Texas 78746
Telephone: (512) 614-0901
Facsimile: (512) 900-2855

ATTORNEYS FOR RATEPAYERS

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested to all parties on this the 6th day of December 2019.

A handwritten signature in black ink, appearing to read 'R. Wilburn', written over a horizontal line.

Randall B. Wilburn

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THE STATE OF TEXAS
COUNTY OF TRAVIS

I hereby certify that this is a true and correct copy of a Texas Water Commission document, the original of which is filed in the permanent records of the Commission.

TEXAS WATER COMMISSION

Given under my hand and the seal of office on MAY 23 1989



Brenda W. Foster
Brenda W. Foster, Chief Clerk
Texas Water Commission

Encl to

AN ORDER in the matter of the complaints of Springwoods Municipal Utility District, North Central Austin Growth Corridor Municipal Utility District No. 1, the City of Rollingwood, and North Austin Growth Corridor Municipal Utility District No. 1 against the City of Austin

On May 11, 1989, the Texas Water Commission (Commission) considered the complaints of Springwoods Municipal Utility District (Springwoods), North Central Austin Growth Corridor Municipal Utility District No. 1 (North Central Austin), Williamson County Municipal Utility District No. 1 (Williamson County), the City of Rollingwood (Rollingwood), and North Austin Growth Corridor Municipal Utility District No. 1 (North Austin) [all collectively referred to as "petitioners" or "complainants"] against the City of Austin (Austin), complaining of wholesale rates charged by Austin to the petitioners for the provision of treated water.

A Commission Hearings Examiner designated the following entities and individuals as parties to the proceedings: the petitioners (Springwoods, North Central Austin, Williamson County, Rollingwood and North Austin); Austin; the Executive Director of the Commission; and the Public Interest Advocate of the Commission.

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After considering the Hearings Examiner's Proposal for Decision and the evidence and arguments presented, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The City of Austin is a municipal corporation and home rule city operating under the Texas Constitution and TEX.LOCAL GOV'T CODE §§9.001-9.008 (Vernon 1988).
2. Austin treats, delivers and sells diverted surface water to a number of large-volume wholesale customers located outside the City's corporate limits.
3. Springwoods, North Central and North Austin are political subdivisions of the State of Texas organized under the authority of Article 16, Section 59 of the Texas Constitution and within the meaning of Section 12.013 of the Texas Water Code.
4. The City of Rollingwood is a municipal corporation and general law city under the Texas Constitution and general laws of the State of Texas.
5. From 1980-1982, Austin entered into agreements and contracts with the complainant municipal utility districts for the purpose of consenting to the creation of such districts in the City's extraterritorial jurisdiction; for providing public financing of water, wastewater and drainage improvements; and for providing treated

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water. Accordingly, the complainant municipal utility districts are contractually entitled to receive treated water from Austin.

6. Austin entered into a water supply contract with Rollingwood in 1968 for the purpose of providing treated water. Accordingly, Rollingwood is contractually entitled to receive treated water from Austin.
7. Each of the petitioners purchases treated water from Austin and in turn distributes and sells the treated water to retail customers located within its respective boundaries. Each of the petitioners owns and operates its own facilities for the distribution of treated water within its boundaries and provides virtually all customer services.
8. The water supply contracts between Austin and each of the petitioners do not specify a particular rate or establish a rate relationship but provide that rates shall be set each year by the City. Annually, the Austin City Council adopts an ordinance which sets the rates for all its outside-city wholesale water customers as a class (hereinafter referred to as the Other Utilities customer class).
9. The wholesale water rate established by Ordinance No. 86106-L for FY 1986-1987 is \$2.26 per each 1,000 gallons above the first 2,000 gallons included in the minimum

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charge. Ordinance No. 870903-P set the rate for FY 1987-1988 at \$2.68 per each 1,000 gallons above the first 2,000 gallons included in the minimum charge. The minimum charge amounts are not contested by any party and are based on meter size.

10. On October 14, 1986, Springwoods properly filed a complaint with the Commission against Austin pursuant to Sections 11.041 and 12.013 of the Texas Water Code. The complaint was docketed as No. 7144-M.
11. On October 15, 1987, North Central properly filed a complaint with the Commission against Austin pursuant to Sections 11.041 and 12.013 of the Texas Water Code. The complaint was docketed as No. 7439-D.
12. On December 17, 1987, North Austin properly filed a complaint with the Commission against Austin pursuant to Sections 11.041 and 12.013 of the Texas Water Code. The complaint was docketed as No. 7518-M.
13. On November 25, 1987, Rollingwood properly filed a complaint with the Commission against Austin pursuant to Sections 11.041 and 12.013 of the Texas Water Code. The complaint was docketed as No. 7466-M.
14. Williamson County filed a complaint with the Commission against Austin but subsequently withdrew its petition on September 16, 1988 prior to the evidentiary hearing.

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15. The complaints and dockets referenced in Findings of Fact Nos. 10-13 were subsequently consolidated by the Commission and form the basis for this proceeding.
16. Each of the petitioners' water rate complaints requested that the Commission review the wholesale rates charged by Austin to the complainant. For each of the complaints, the Executive Director conducted a preliminary investigation and determined that probable grounds exist for the complaints.
17. Proper legal notice of all proceedings was provided by the Commission in accordance with Section 11.041 of the Texas Water Code and the Administrative Procedure and Texas Register Act.
18. Preliminary hearings concerning the complaints were conducted by a Commission Hearings Examiner in accordance with the Commission's rules on January 7, 1988, February 22, 1988, March 3, 1988, June 13, 1988, July 1, 1988, and September 12, 13 and 16, 1988.
19. An evidentiary hearing concerning the complaints was conducted by a Commission Hearings Examiner in accordance with the Commission's rules on September 20-23 and 26-29, 1988. The record of these proceedings was closed following the receipt of written closing arguments and subsequent replies on November 7, 1988.

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20. The cash basis method of rate setting was adopted by the parties to this proceeding and is the appropriate method by which to fix rates applicable to the petitioners.
21. Uncontroverted testimony by duly authorized representatives of the complainants established that Springwoods, North Austin, North Central Austin and Rollingwood are willing and able to pay a just and reasonable rate for treated water supplied by Austin.
22. Prior to these proceedings, Austin had never conducted a detailed cost-of-service analysis to determine rates for the Other Utilities customer class.
23. Prior to these proceedings, Austin established rates applicable to the Other Utilities customer class based upon budgetary policy. Current policy dictates a wholesale rate of 125 percent of inside-city retail rates.
24. According to commonly accepted ratemaking principles, a reasonable, just and nondiscriminatory wholesale water rate must be calculated on the basis of Austin's actual cost to serve the Other Utilities customer class.
25. The applicable test year for these proceedings is fiscal year (FY) 1986-1987, with known and measurable changes based on historical data for FY 1987-1988. It is requested that rates be established from both periods.

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- a. Such is an appropriate test period because it is the most recent year for which actual historical data was available during the hearing.
- b. A recent test year provides a more accurate basis for the projection of future rates.
26. During the initial stages of these proceedings Austin was required to file with the Commission a cost-of-service analysis to justify the wholesale water rates charged to the petitioners. Prior to the evidentiary hearing, Austin submitted four separate and to some extent conflicting cost-of-service analyses to support its wholesale rates.
27. The first cost-of-service analyses (COSA1) was submitted to the Commission on July 16, 1987 and utilized a mixture of actual and budgeted information for FY 1986-1987 to support its differential water rate policy and a revenue requirement of \$68,851,000.
28. COSA1 indicates that the cost to serve the Other Utilities customer classes is almost exactly 1.25 times the cost to serve inside-city water customers.
29. Austin filed a revised cost-of-service analysis (COSA2) on November 17, 1987, which corrected a number of errors and questionable assumptions made in COSA1. COSA2 contained significant changes to Austin's methodological approach which were prejudicial to the Other Utilities

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- customer class and which counteracted the corrections to COSA1. The exact same revenue requirement was retained.
30. On May 16, 1988, Austin submitted another revised filing (COSA3) which increased the revenue requirement to \$74,359,691. Rather than evaluating costs for two separate periods (FY 1986-1987 and FY 1987-1988), as required by the Examiner, Austin failed to develop a rate differential for the first period in question, and chose only to develop a rate analysis for the second period.
 31. On August 1, 1988, Austin submitted the prefiled testimony of B. C. Sarma who developed a fourth rate analysis (COSA4) that is fundamentally different from the previous three studies. After two further revisions to COSA4 during the course of the proceedings, the Sarma study produced a revenue requirement of \$79,146,386.
 32. Austin provided the direct testimony of Mr. Sarma and did not present testimony from any of the City staff members who developed the three prior rate filing packages.
 33. The cost of service set forth in Findings of Fact Nos. 49 and 50 provide a debt coverage ratio of 1.35 for FY 1986-1987 and 1.33 for FY 1987-1988.
 34. The coverage ratios set forth in Finding of Fact No. 33 are reasonable and sufficient to enable Austin to meet its debt service and bond coverage requirements and to

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ensure continuing access to credit markets on reasonable terms and maintain a satisfactory capital structure.

- a. Austin issues combined utility systems bonds which are payable as to both principle and interest solely from, and secured by a lien on and pledge of, the combined net revenues of the electric light and power department and the water and wastewater department. Austin operates its water and wastewater systems on a combined utility basis.
- b. The proposed ratios produce an equalization of debt coverage between the water and wastewater systems and thereby eliminate cross-subsidies between utility systems.
- c. The Austin bond covenants require a debt service coverage ratio of only 1.25.
- d. Some amount of revenue coverage in excess of the minimum amount required to satisfy the City's bond covenants is reasonable to ensure continuing access to credit markets on reasonable terms and to maintain a satisfactory capital structure.
- e. The Austin City Council had targeted a debt coverage ratio of only 1.37 for FY 1987-1988 in its approved financial plan.

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- f. The proposed coverage ratios are entirely consistent with the combined debt service coverage ratios implicit in Austin's own rate filing packages.
35. No cost-based justification was presented for holding water customers responsible for a disproportionate share of combined debt service coverage costs by assigning a higher ratio of coverage to the water utility.
36. An equalization of debt coverage ratios between the water and wastewater systems would not affect the total coverage for the combined water and wastewater department since such would only amount to a redistribution of costs within the same department.
37. Debt service coverage is essentially calculated as the difference between total available funds and operation and maintenance expenses.
- a. As per the Austin bond covenants, beginning balance amounts should not be included in the calculation of debt service coverage.
- b. Commercial paper and capital lease obligations should not be included in the calculation of coverage ratios since their financial obligations represent secondary liens which do not require a coverage ratio greater than 1.00.

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c. Net rather than gross contract revenue bond debt should be included in the calculation of debt service coverage.

(1) Eighty-six percent of the budgeted contract revenue bond debt is the direct responsibility of wholesale customers and is to be recovered by contract bond revenues from these customers. The cost of serving such contract bond debt is a contingent liability of Austin.

(2) The wholesale customers are not likely to default on their obligations.

(a) In every instance of the issuance of contract revenue bonds, the participating municipal utility districts have financially borne, in full, their pro rata share of the capital costs of the improvements.

(b) Default is improbable since the bonds are additionally collateralized by and payable from a levy by the districts of an annual ad valorem tax, without limit as to rate or amount, upon all taxable property within the districts.

(3) The Austin analyses and testimony have been inconsistent with respect to the inclusion of

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contract revenue bond debt in the calculation of debt service coverage.

38. The debt service coverage ratio of 1.5 suggested by Austin during the hearing is not reasonable or appropriate.

- a. A ratio of 1.5 substantially exceeds and is inconsistent with the combined target coverage ratios of 1.3 and 1.37 recommended by the Austin City Council prior to these proceedings in its approved Financial Plans for FY 1986-1987 and 1987-1988, respectively.
- b. A ratio of 1.5 substantially exceeds and is inconsistent with the ratio of 1.25 required by the City's bond covenants.
- c. Testimony provided by Austin concerning the proposed coverage ratio of 1.5 is not credible.
 - (1) A ratio of 1.5 was proposed in COSA4 only one month prior to the evidentiary hearing and represents a significant departure from prior cost-of-service analyses.
 - (2) Although City witness Sarma proposed a coverage ratio of 1.5, he testified that he did not know what coverage target the City Council had used when it set rates.
 - (3) Sarma's cost-of-service analysis and testimony were subsequently rebutted by the City's own

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rebuttal witness Newman with respect to the utilization of beginning balances and net contract revenue bonds in the calculation of debt service coverage.

(4) The testimony of rebuttal witness Newman is inconsistent with prior positions adopted by the City during the proceedings with respect to proper debt coverage ratios.

d. By way of comparison, a ratio of 1.5 would exceed the proposed target coverage ratio of 1.475 recommended by the City with respect to the City's electrical operations.

(1) Electrical operations account for approximately 76 percent of the combined gross revenues for Austin's utility operations and 72 percent of the combined debt service requirements.

(2) There is a higher level of risk associated with the construction and operations of electric generating facilities.

e. It would be inappropriate to attempt to maintain debt service coverage at long-term target levels such as 1.5 since this would shift the burden of financing current excess capacity from future ratepayers, the ultimate beneficiaries of excess

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capacity, to current ratepayers in contravention of commonly accepted rate-making practices.

39. Maintenance of the coverage ratios set forth in Finding of Fact No. 33 will produce actual "operating" coverage ratios, a distinct coverage calculation which takes into consideration beginning balances, in the range of 1.69 to 1.95. These coverages are consistent with actual "operating" coverages for the combined water and wastewater department for the period 1980 to 1988.
40. Transfers to the City's general fund for administrative support are proper expense items since various services are rendered to the water utility in return for such transfers.
41. Unspecified blanket transfers to the general fund should be functionalized between the water and wastewater systems based upon the number of gallons of water and wastewater billed by Austin. The transfer amounts should be subfunctionalized within the water utility and are justifiable only to the extent necessary for the provision of adequate debt service coverage.
 - a. Functionalization based upon gallons billed provides an equitable assignment of transfer costs between the water and wastewater utilities.
 - (1) Austin has placed the entire burden of these transfers upon only the water utility fund and

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has assigned no cost burden for this item to the wastewater utility fund.

- (2) No cost-of-service based reason was presented to justify an inequitable division of such transfers.
- b. City Ordinance No. 841129-G provides for an assignment of general fund transfers based on total water department sales with adjustments over time to reflect general inflation.
- c. An allocation of this revenue requirement component to the wholesale customer class in proportion to the class' share of total cost of service, as suggested by Austin, is not reasonable or appropriate except to the extent necessary for the provision of adequate debt service coverage because the petitioners do not receive utility-related services or other direct reciprocal benefits in return for these significant general fund transfers.
 - (1) The general fund transfers are not related to the provision of water service or the functioning of the utility.
 - (2) The petitioners are political subdivisions located outside the Austin corporate limits and do not receive the direct benefits of general fund services.

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- (3) The general fund transfers are apparently a mechanism to fund City functions and services by means other than property taxes.
- (4) The petitioners already make other significant contributions to the general fund in the form of sales taxes, higher user fees, electric utility rate revenue transfers, and fines and penalties.
- (5) With the exception of providing adequate debt service coverage, there is no basis for considering such transfers in setting cost-based rates.

42. It is reasonable to functionalize ending balance amounts so as to equalize the assignment of such costs between the water and wastewater utility systems and to ensure an amount of revenues sufficient to maintain adequate debt coverage ratios. Ending balances represent the difference between available funds and total disbursements or, more specifically, the net result of water utility revenues minus utility expenses.

- a. Austin targets an ending balance cash reserve sufficient to provide for one month's operation and maintenance expenses and mandated revenue bond coverage requirements.

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- b. The ending balance requirements set forth in Findings of Fact Nos. 49 and 50 will permit Austin to provide at least one month's operation and maintenance expenses and satisfy the mandated debt service coverage requirements.
43. The functionalization of ending balance requirements proposed by Austin is not reasonable.
- a. The ending balance amounts recommended in the Austin rate filings vary significantly among the various analyses.
- b. The ending balance amounts proposed by Austin are dramatically misallocated between the water and wastewater utility systems without cost-of-service based justification.
- (1) Substantially all of the combined ending balance requirements are allocated to the water utility. For fiscal year 1987-1988, approximately 138 percent of the ending balance requirements are assigned to the water fund.
- (2) The impropriety of such allocation is reflected in the fact that the net revenue requirements of the wastewater utility indicated in COSA3 are actually greater than those of the water utility, which indicates that a higher

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proportion of ending balance requirements could be allocated to the wastewater operations.

- (3) No cost-of-service basis was presented by Austin to justify the subsidization of wastewater operations through the maintenance of substantially greater ending balance requirements for the water utility.

44. It is not inappropriate to draw down beginning balances to reduce the amount of revenues necessary for the provision of water service.

- a. The cash basis method of rate-making was utilized by the parties to this proceeding.
- b. Under the cash basis method of rate-making, the utility is not entitled to include in its cost-of-service analysis a factor for profit or depreciation.
- c. The combined Austin water and wastewater utility is a publicly-owned utility.
- d. Excess balances for publicly-owned utilities do not belong to the municipality and should eventually be returned to the ratepayers in the form of services, additional facilities, or reduced rates.
- e. The beginning balances are comprised of surplus net revenues collected, in part, as a result of excessive rates and are neither a profit nor a

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depreciation reserve to which the City is individually entitled.

- f. A draw down of beginning balances will have no impact on any prior rate period.
 - g. In three of its own rate analyses filings, Austin substantially drew down its beginning balances, and the other parties merely adopted the City's approved methodology. The petitioners and Commission's staff accepted the full amounts of the combined revenue requirements proposed by Austin, including the ending balance amounts, proposed by Austin and merely recommended an alternative functionalization of the combined requirements between the water and wastewater utilities.
45. Use of the distance factor proposed by Austin is not reasonable or appropriate inasmuch as a fair assignment of locational cost responsibilities in Austin's complex and integrated water system is not possible based upon the available data.
- a. Distance-related costs may be offset by other savings such as economies-of-scale, contributed capital and locational attributes of the water system.

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b. Cost differences may not be directly and proportionally related to distance since many locational variables come into play when calculating costs.

(1) There is a complex calculus involved in determining locational cost factors which includes consideration of topographic conditions, soil conditions, pressure plane differences and population density.

(2) The efficiency of network configuration and the age and condition of facilities required for the provision of service have a significant potential impact on cost of service.

(3) The data required to support an analysis of factors such as main size and elevation are not available.

c. A relationship between distance and net cost cannot be adequately or reasonably demonstrated by Austin at this time.

(1) During the development of its capital recovery fee program, Austin conducted a thorough analysis of water utility capital costs.

(2) As a result of the study, Austin determined that locational cost allocations are technically infeasible.

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- (a) It determined that the location of facilities is to some degree discretionary and that geographically specific cost allocations are not necessarily equitable.
- (b) It determined that in an integrated water system, it is extremely difficult to assign specific costs by geographic area since any particular area may be served at different times by different facilities and pipes.
- (c) It determined that Austin does not have the appropriate data to calculate such geographically specific cost allocations.
- d. Distance-related capital costs are already recovered by Austin through an existing capital recovery fee program.
- (1) Austin already maintains a carefully integrated system of utility rates and capital recovery fees which are applied in an equitable manner to both future and preexisting customers.
- (2) Some members of the Other Utilities customer class are not required to pay capital recovery fees because they were specifically exempted from fee payments when the ordinance was enacted, as were preexisting retail customers.

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- (4) Distance should be measured from the points at which Austin has some cost exposure as a result of the wholesale customers.
- f. Different treatment of inside-city and outside-city municipal utility districts is discriminatory and illustrates the inequitable aspects of the distance factor.
- (1) Recently created municipal utility districts are generally required to be annexed as a condition of their consent agreements.
- (2) Prior districts were formerly required to remain outside the city limits.
- (3) The recently created inside-city districts impose greater service and cost responsibilities on the City's water utility system than the older outside-city districts, but are charged lower rates.
- (4) The inside-city districts are in several cases more distant from the nucleus of the City water system than the petitioners and impose additional significant service and cost responsibilities in the form of retail customer accounting, billing, and maintenance which are not borne by Austin with respect to the Other Utilities customer class.

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g. Methodological inconsistencies in the Austin analysis serve to penalize the petitioners.

(1) Throughout the Austin rate filings, Austin consistently examined a specific and particular array of customer classes, since there are internal similarities which define each class.

(2) In the calculation of distance factors, however, Austin changed its approach to customer class definition and combined the Other Utilities customer class with two rural classes in a manner prejudicial to the petitioners.

(3) The Austin analysis excludes wholesale customers whose estimated distance from treatment facilities is less than one mile, resulting in an inequitable overestimation of the weighted average distance for the wholesale class.

46. It is reasonable to allocate costs to ratepayers for excess demands on the utility's facilities resulting in accelerated deterioration of the facilities; however, the average and excess method utilized by Austin in COSA3 is not reasonable.

a. The apparent weight given to average use by the Austin average and excess method is illusory.

b. The City's method is an indirect formula for the calculation of class contribution to peak demand.

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- c. COSA3 allocates all treatment and transmission costs on the basis of class contribution to sales during the single month of maximum use.
 - d. COSA3 abandoned the approach utilized in COSA2 by utilizing an urban residential peak derived from July sales while utilizing August sales for all the other rate classes. No basis was provided by Austin for this change and Austin failed to produce work papers to support such adjustment.
 - e. COSA3 adjusted historical sales to reflect customer growth and to eliminate the impact of deviations from normal weather. Austin failed to produce any work papers or other support for these adjustments and calculations.
 - f. There are mathematical errors in the City's calculations of peak use allocators.
47. The Sarma cost-of-service analysis is not credible, reasonable or appropriate.
- a. The Sarma prefiled testimony represents the fourth cost of service and methodology presented by Austin during these proceedings. Austin did not dispute that the approach utilized by Sarma represents a departure from previous rate filings.
 - b. The Sarma analysis and methodology was presented on August 1, 1988, only one month prior to the

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evidentiary hearing and subsequent to an Examiner's ruling that no further revisions or modifications to the Austin rate filings would be permitted in the absence of good cause.

- c. The Sarma analysis substantially increased the revenue requirement proposed by Austin in its prior filings.
- d. The method utilized by Sarma produces results substantially identical to an allocation of costs based solely on peak demand, but is more extreme than prior City analyses since virtually all treatment, transmission and distribution costs are attributed to sales during a single day or hour in the year.
- e. The use of City of Fort Worth data to determine utilization of the Austin water system by the petitioners during peak conditions is not appropriate since such data are not entirely descriptive of or applicable to the petitioners.
 - (1) To accept the Sarma assumption of comparability, a detailed analysis comparing climatological, demographic and economic data generally would be required, all of which were not conducted by Austin.

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- (2) The data for individual Fort Worth customers utilized by Sarma to derive averages are so variable that it is statistically improper to use such data to estimate peak-day or peak-hour sales for individual wholesale customers of Austin.
- (3) An analysis of actual daily meter readings from the Austin system indicates that the Sarma estimates of peak use overstate actual peak use by approximately 50 percent.
- (4) Sarma failed to adjust his data to exclude "partial requirements" customers and sales to the Dallas-Fort Worth Airport.
- (5) The Fort Worth data do not measure customer use at the time of system peak, yet Sarma utilizes the data to predict the ratio of peak to average demand for the petitioners during the day or hour of system peak.
- (6) Sarma abandoned the distance weighting utilized in COSA3 and performed a "used and useful" analysis which reflects to some extent both pipe diameter and distance in the form of an "inch-foot" study.
- (7) Sarma failed to produce work papers or other support for some of his analyses.

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(8) In its closing argument, Austin attempted to superimpose distance factors derived by the staff, and which are based on COSA3 distance calculations previously rejected by Sarma, onto the Sarma inch-foot analysis. This results in "double counting" of distance-related costs, and such approach was offered after the close of the evidentiary hearing.

48. The analysis recommended by the staff of the Commission represents a reasonable and appropriate approach to the calculation of reasonable, just and nondiscriminatory wholesale rates.

a. The staff adopted a methodology similar to that proposed by Austin in COSA3 but made a number of reasonable adjustments and changes to better identify the costs associated with the provision of service to the wholesale customers.

(1) To compensate for expenses associated with the delivery of water outside the city, the staff calculated ratios of inside-city living-unit-equivalent-miles (LUE-miles) to outside-city LUE-miles to weight the quantities of purchased water attributed to all customers outside Austin's corporate limits.

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- (2) The staff utilized a distance factor in the absence of sufficient data upon which to adopt an allocation based on used and useful facilities.
- (3) The staff used a ratio derived from COSA2 to allocate distance- and nondistance-sensitive transmission and distribution costs among the various customer classes recognized by Austin.
- (4) The staff made the following specific changes to the City's methodology:
 - (a) The staff corrected mathematical errors in the City's work papers relative to the calculation of average monthly purchased water volumes for the wholesale customers.
 - (b) The staff retabulated the monthly purchased water figures for each member of the Other Utilities customer class to include all meters each customer has in service.
 - (c) Adjustments were made to the City's derivation of distance factors to include accurate distances from treatment facilities to various members of the Other Utilities customer class. The staff did not adopt the City's approach of

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calculating a distance factor for the rural residential and rural general customer classes and applying that factor to the Other Utilities customer class since such will overstate the proper distance factor.

- (d) Individual meter readings provided by Austin for each of the Other Utilities class customer were combined to include only one volume amount in the calculation of LUE-miles.
 - b. The staff analysis substantially parallels the recommendations of the Examiner with respect to the functionalization, classification, and allocation of the cost to serve the Other Utilities customer class, and it produces reasonable, just and nondiscriminatory rates beginning in fiscal years 1986-1987 and 1987-1988.
49. The total cost of service for which rates should be charged for fiscal year 1986-1987 is \$59,946,060 and consists of the following items:

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Beginning Balance	(\$21,067,018)
Nonservice Revenues	(\$17,032,602)
Operations & Maintenance	\$29,518,288
Capital Outlay	0
Commercial Paper/Capital Lease	0
Debt Service	\$35,096,114
Other Requirements	\$14,511,063
General Fund Transfer	\$ 3,999,970
Required Ending Balance	\$14,511,063
Total Revenue Requirement	\$59,946,060

50. The total cost of service for the Austin water utility for which rates should be charged for fiscal year 1987-1988 is \$70,200,483 and consists of the following items:

Beginning Balance	(\$14,511,063)
Nonservice Revenues	(\$14,319,972)
Operations & Maintenance	\$31,589,778
Capital Outlay	\$ 234,255
Commercial Paper/Capital Lease	\$ 690,415
Debt Service	\$39,385,753
Other Requirements	\$13,452,602
General Fund Transfer	\$ 4,503,446
Required Ending Balance	\$ 9,175,269
Total Revenue Requirement	\$70,200,483

51. An overall annual revenue requirement of \$59,946,060 reflected in Finding of Fact No. 49 is reasonable for the provision of treated water by Austin during FY 1986-1987.
52. Application of the staff method of classification and allocation to the costs of service reflected in Finding of Fact No. 49 results in an annual revenue requirement of \$3,371,024, which is reasonable for the provision of treated water to the Other Utilities customer class during FY 1986-1987.

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53. An overall annual revenue requirement of \$70,200,483 reflected in Finding of Fact No. 50 is reasonable for the provision of treated water by Austin beginning with FY 1986-1987.
54. Application of the staff method of classification and allocation to the costs of service reflected in Finding of Fact No. 50 results in an annual revenue requirement of \$4,101,835 which is reasonable for the provision of treated water to the Other Utilities customer class beginning with FY 1987-1988. Based on data for test year 1986-87 accounting for known and measurable changes through fiscal year 1987-88, a reasonable rate for the wholesale customer class is \$1.64 per 1,000 gallons.
55. The revenue requirements referenced in Findings of Fact Nos. 51-54 produce wholesale rates for the Other Utilities customer class of \$1.51 for each 1,000 gallons during FY 1986-1987 and \$1.64 for each 1,000 gallons beginning with FY 1987-1988.
56. The rates referenced in Finding of Fact No. 55 reflect an overcharge of \$0.75 per each 1,000 gallons during FY 1986-1987 and an overcharge of \$1.04 per each 1,000 gallons beginning with FY 1987-1988 for members of the Other Utilities customer class.
57. Refunds to the petitioners should be distributed based upon specific volumes of purchased water.

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FY 1987-1988 are not reasonable, just and nondiscriminatory.

7. The rates set out in Findings of Fact Nos. 49 through 55 are reasonable, just and nondiscriminatory.

WHEREAS Chairman B. J. Wynne, III, and Commissioner Paul Hopkins vote to issue this Order and with Commissioner John O. Houchins not in attendance;

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS WATER COMMISSION THAT:

1. Austin shall charge and the petitioners shall pay the rates established in this Order.
2. Austin shall refund to each petitioner the difference between the rates established in this Order and the rates actually paid by each petitioner, plus interest at the statutory rate, from date of each petition to the date of this Order.
3. The petition of Williamson County be hereby dismissed.
4. All Exceptions and proposed Findings of Fact and Conclusions of Law are hereby overruled to the extent not specifically adopted herein.
5. The Chief Clerk of the Texas Water Commission shall forward a copy of this Order to all parties.
6. If any provision, sentence, clause or phrase of this Order be for any reason held to be invalid, the

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CONCLUSIONS OF LAW

1. The public hearing concerning the complaints against Austin was held under the authority of Sections 11.036, 11.041 and 12.013 of the Texas Water Code.
2. Pursuant to Section 12.013(a) of the Texas Water Code, the Commission has the authority to fix reasonable rates for the furnishing of treated water.
3. In accordance with Section 12.013(c) of the Texas Water Code, the Commission in reviewing and fixing reasonable rates for furnishing treated water may use any reasonable basis for fixing rates as may be determined by the Commission to be appropriate under the circumstances of the case being reviewed.
4. In accordance with Section 12.013(c) of the Texas Water Code, a rate as set out in Finding of Fact No. 55 is sufficient to meet the debt service and bond coverage requirements of the City's outstanding debt.
5. Pursuant to Section 12.013(f) of the Texas Water Code, the Commission may order a refund from the date a petition for rate review is received by the Commission of the difference between the rate actually charged and the rate fixed by the Commission, plus interest at the statutory rate.
6. The wholesale water rates established by Austin for the Other Utilities customer class for FY 1986-1987 and

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FY 1987-1988 are not reasonable, just and nondiscriminatory.

7. The rates set out in Findings of Fact Nos. 49 through 55 are reasonable, just and nondiscriminatory.

WHEREAS Chairman B. J. Wynne, III, and Commissioner Paul Hopkins vote to issue this Order and with Commissioner John O. Houchins not in attendance;

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS WATER COMMISSION THAT:

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invalidity of any portion shall not affect the validity
of the remaining portions of the Order.

Signed this 23rd day of May , 1989.

TEXAS WATER COMMISSION

B. J. Wynne III - Chairman

ATTEST:

Brenda W. Foster
Brenda W. Foster, Chief Clerk