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RATEPAYERS APPEAL OF THE
DECISION BY BEAR CREEK SPECIAL
UTILITY DISTRICT TO CHANGE
RATES

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BEFORE THE STATE OFFICE
OF
FILING CLERK

ADMINISTRATIVE HEARINGS

BEAR CREEK SPECIAL UTILITY DISTRICT'S
INITIAL POST-HEARING BRIEF

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**BEAR CREEK SPECIAL UTILITY DISTRICT'S
INITIAL POST-HEARING BRIEF**

TO THE HONORABLE LINDA BRITE AND CHRISTIAAN SIANO, ADMINISTRATIVE
LAW JUDGES ("ALJS"), STATE OFFICE OF ADMINISTRATIVE HEARINGS ("SOAH"):

Bear Creek Special Utility District (the "District") files this, its Initial Post-Hearing Brief in this rate appeal brought by retail customers of the District under Section 13.043(b) of the Texas Water Code ("TWC"). For the reasons set forth below, the District has met its burden of proof and has shown that it is entitled to the entirety of the appealed rates it established by act of its Board of Directors on October 9, 2018, that were in effect from December 18, 2018, to February 17, 2020.¹

I. INTRODUCTION

1. The District is a special utility district operating under Chapters 49 and 65 of the Texas Water Code.
2. The District began as Lavon Water Supply Corporation in 1965. In 2013, Lavon Water Supply Corporation converted to Lavon Special Utility District. In 2016, the Texas Commission on Environmental Quality approved the name change from Lavon Special Utility District to Bear Creek Special Utility District.

¹ Direct Testimony of Debi Loockerman at 3:9-11 (Oct. 19, 2020).

3. The District is governed by a Board of seven elected directors (the “Board”), each of whom serves a three-year term.
4. The District currently serves over 8,000 residents over a service area of approximately 21 square miles, with 2,422 connections to the system.
5. Joe Helmberger, the District’s system engineer, provided the District with a Water Master Plan (“WMP”), which was finalized June 2017 and subsequently updated October 2018. The WMP reflected additional facilities that would be required to serve all customers at the District’s full system buildout. Of the 23 projects included in the WMP, the District began with improvements needed at Pump Station #2, which were “necessary to provide both adequate facilities and improved water distribution.”² The estimated cost for the improvements the District undertook was \$7,490,000.³
6. In 2018, the District contracted with Greater Texoma Utility Authority (“GTUA”) to finance necessary improvements identified in the WMP through funds obtained from the Texas Water and Development Board (“TWDB”).⁴
7. On October 9, 2018 and based on the recommendation of GTUA and GTUA’s financial advisor, the Board voted to increase rates by \$10 per meter.⁵ This rate appeal arose from that increase.⁶
8. On March 18, 2019, customers of the District (“Petitioners” or “Ratepayers”) filed a petition entitled “Petition to Oppose Water Rate Increase by Ratepayers of the Bear Creek

² Direct Testimony of Joe Helmberger at 10 (Aug. 3, 2020).

³ *Id.* at 10, 12 (citing Exhibit JH-4); *see also* Direct Testimony of Drew Satterwhite at 6 (describing cost of improvements).

⁴ Hearing on The Merits Thursday, January 28, 2021 (Via Zoom Videoconference) at 51:4-15 (Feb. 23, 2021) [hereinafter, “Hearing Transcript”].

⁵ Direct Testimony of Debi Loockerman at 3:9-11.

⁶ The rates that were appealed are no longer in effect. *Id.*

Special Utility District” (the “Petition”) appealing the District’s rates with the Public Utility Commission of Texas (“Commission”).⁷ The Commission referred the appeal to SOAH for hearing on June 21, 2019.⁸

9. The Commission adopted a Preliminary Order establishing the issues to be considered in this matter on July 18, 2019.⁹
10. On January 28, 2021, the ALJs conducted the hearing on the merits via Zoom Videoconference with representatives of the District, the Ratepayers’ representatives, and Commission Staff (together, “the Parties”).
11. On February 5, 2021, after completion of the hearing on the merits, the Parties filed an Agreed Briefing Outline and Proposed Procedural Schedule, as was discussed in the hearing. On February 8, 2021, the ALJs adopted the briefing outline and proposed schedule in SOAH Order No. 12, setting March 5, 2021 as the deadline to file this Initial Post-Hearing Brief, as well as Proposed Findings of Fact and Conclusions of Law.¹⁰
12. The District timely files this brief, and its proposed findings of fact and conclusions of law, pursuant to SOAH Order No. 12.

II. VALIDITY OF THE PETITION (Preliminary Order Issue No. 1)¹¹

13. On March 18, 2019, Ratepayers filed the Petition pursuant to Section 13.043(b) of the TWC.

⁷ Ratepayers’ Opposition to Rate Increase and Petition to Appeal Rates Established by the Board of Directors of Bear Creek Special Utility District (Mar. 18, 2019) [hereinafter, the “Petition”].

⁸ Order on Referral (June 21, 2019).

⁹ Preliminary Order (July 18, 2019).

¹⁰ See Exhibit A (Proposed Findings of Fact and Conclusions of Law).

¹¹ In the briefing guidelines, the ALJs asked the Parties that for each section of their Initial Post-Hearing Briefs, “indicate which issues of the preliminary order it addresses.” See SOAH Order No. 12 (Feb. 8, 2021).

14. While Petitioners did timely file with the Commission, they failed to file a copy with the District. The District contested the sufficiency of the service of the Petition provided to the District.
15. On April 17, 2019, Commission Staff filed Comments on Administrative Completeness, in which it stated that Petitioners' appeal of the District's rate change met the requirements of 16 TAC § 24.103 and requested that the Commission find the petition administratively complete and refer the proceeding to the State Office of Administrative Hearings ("SOAH").¹²
16. On April 29, 2019, the Commission ALJ entered Order No. 2, deeming the Petition sufficient to be referred to SOAH for a hearing on the merits.¹³

A. Protests

17. The TWC permits ratepayers to appeal rates established by a district or authority that provides water or sewer service to household users. Ratepayers are required to file a petition within 90 days after the effective date of the rate change, and a petition must be signed by at least 10% of the ratepayers whose rates have been changed and are eligible to appeal.¹⁴
18. The Commission's Order of Referral includes a finding that over 10% of the eligible ratepayers had signed the petition to appeal the rates in this proceeding.¹⁵

¹² Comments on Administrative Completeness (Apr. 17, 2019).

¹³ SOAH Order No. 2 – Deeming Petition Sufficient for Further Processing (Apr. 29, 2019).

¹⁴ TWC §13.043(c); 16 Tex. Admin Code §§ 24.41, 24.42.

¹⁵ Order of Referral at 1 (June 21, 2019).

19. The District does not contest that the Petition was supported by sufficient protests or that it was timely filed.

B. Effective Date of Rate Change (Preliminary Order Issue No. 8)

20. The effective date of the rate change was December 18, 2018, as established in the notice sent to the District's customers.¹⁶

**III. INTERIM RATES
(Preliminary Order Issue No. 2 & 5)**

21. The Preliminary Order set forth the following: "Should the Commission establish or approve interim rates to be in effect until a final decision is made?"¹⁷

22. Interim rates were not requested, established, or approved in this case. Interim rates need not be addressed because the appealed rates are no longer in effect.¹⁸ The ALJs noted this in the hearing on the merits, stating that the "rates that were appealed have since been superseded by other rates, so there's only a finite number of months we are actually reviewing."¹⁹ The District agreed.²⁰

23. The District adopted new rates on January 21, 2020, which replaced the rates that are the subject of the Petition.²¹

¹⁶ SOAH Order No. 1 at 1 (July 11, 2019).

¹⁷ Preliminary Order at 2 (July 18, 2019) (Issue No. 2).

¹⁸ *See, e.g.*, Direct Testimony of Debi Loockerman at 3:9-11 (testifying that the appealed rates were in effect from December 18, 2018, to February 17, 2020).

¹⁹ Hearing Transcript at 28:2-7.

²⁰ *Id.* at 28:7 ("That is correct, Judge Siano.").

²¹ Direct Testimony of Jay Joyce at 8 (Aug. 3, 2020).

24. As clarified by the ALJ, the appealed rates at issue do not include the current rates or future rates, but only the months in question, and the District agreed, aside from “the application of any potential refund or surcharge.”²²

**IV. JUST AND REASONABLE RATES (Contested)
(Preliminary Order Issue No. 3)**

25. The District’s rates under appeal meet the requirements of TWC § 13.043(j)—the appealed rates are just and reasonable, equitably distributed between classes of customers, and nondiscriminatory.
26. The only contention between the Parties about the appealed rates is the amount of debt service coverage they incorporate. Ratepayers’ representatives have no dispute that goes to the justness and reasonability of the appealed rates.²³ Commission Staff and the District agree on the overall revenue requirement and rate design methodology other than their dispute regarding debt service coverage.²⁴
27. TWC § 13.043(e) provides that the “utility commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed.”

²² Hearing Transcript at 28:8-14.

²³ Ratepayers’ Representative seemed uninterested in what was supposed to be the substance of the hearing on the merits—the appropriate revenue requirement for the District—preferring to question Ms. Reagan about deposit monies and events that post-dated the rate change altogether. The ALJ asked, “[D]o you have a question with respect to how the rates were developed that are being appealed?” Ms. Fato simply said, “No.” Hearing Transcript at 65:5-10.

²⁴ See Hearing Transcript at 25:16-19 (noting that “Bear Creek SUD has no dispute with Staff’s recommendation regarding cost, revenues, or rate design or rate-case expense recovery. We essentially have accepted those recommendations.”).

28. In prefiled testimony, Commission Staff raised the issue of “change in rate design” and the District did not rebut it.²⁵ The District does not dispute Commission Staff’s rate design methodology recommendation to “match the meter equivalencies.”²⁶

A. Requirements of Section 13.043(j)

29. Under TWC § 13.043(j), the utility commission “shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers.”²⁷

B. Information Available to the District at Time of Rate Change

30. In a rate appeal brought under TWC § 13.043, in which the Commission is charged with using de novo review to “fix the rates the governing body should have fixed,” the Commission expressly “may consider *only* the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred . . . in the appeal proceedings.”²⁸

31. At the hearing on the merits, the District presented witnesses who were aware of and involved in the decision to increase rates that the Board made on October 9, 2018, and were aware of the information known to the District at the time.

²⁵ Hearing Transcript at 26:1-6.

²⁶ *Id.*; see also *id.* at 29:5-8 (suggesting that the parties “would be able to stipulate to the admission of facts surrounding the revenue requirement except for debt service coverage.”).

²⁷ *Id.*

²⁸ TWC § 13.043(e) (emphasis added). See Hearing Transcript at 58:20-23 (noting that only information available at the time it made the decision to raise rates on October 9, 2018 could be considered by law.).

32. Joe Helmberger, the engineer for the District, whose prefiled testimony was admitted without objection,²⁹ testified regarding the capital improvements that the District needed, and the necessity for obtaining financing for those improvements. The projected costs for the capital improvement was \$7,490,000.³⁰

33. Mr. Satterwhite, General Manager of GTUA, testified that in assisting the District in obtaining financing from the TWDB, he recommended the District needed to achieve a 1.25 debt service coverage in order to obtain funding from TWDB through GTUA.³¹ Mr. Satterwhite testified that he reviewed the District's financing request, and confirmed that he determined that a "\$10 meter-a-month increase along with a later increase of \$5 per meter per month" was required to "get [the District] to the additional revenue necessary" to secure the financing for the District's needed improvements.³²

34. Mr. Satterwhite testified that: "[b]ased on the number of customers that Bear Creek had at the time of this evaluation and the revenue requirement that was necessary to meet our targeted goal. And we basically multiplied the number of customers by the \$10 to come up with the revenue requirement for the rate increase."³³ The District's Board adopted GTUA's recommended increase.³⁴

35. Mr. Satterwhite testified that, although "...the [Greater Texoma Utility] Authority [(“GTUA”)] strives for 1.25 coverage . . .,” in this case the Authority settled for a rate increase of \$10 per meter per month that provided 1.18 coverage in the lowest year of the

²⁹ Hearing Transcript at 30:8-11.

³⁰ Direct Testimony of Joe Helmberger at 10, 12 (Aug. 3, 2020) (citing Exhibit JH-4); *see also* Direct Testimony of Drew Satterwhite at 6 (Aug. 3, 2020) (describing cost of improvements).

³¹ *Id.* at 70:9-71:1.

³² *Id.*

³³ *Id.* at 72:20-73:2.

³⁴ Direct Testimony of Camille Reagan at 21 (Aug. 3, 2020).

pro forma. The pro forma that he provided at the time the rates were set is further evidence of these recommendations.

36. Ratepayers' representatives questioned Mr. Satterwhite about whether he had factored in the growth potential for the District's customer base in his recommendation for a rate increase. Mr. Satterwhite testified that he did not because the TWDB does not allow GTUA to consider unknown future conditions when securing financing. The staff of the TWDB "want to know that if everything stopped today, depending on the economic environment a year from now . . . that the rates are sufficient at that point in time to cover debt service."³⁵ GTUA is "not allowed to speculate on what additional customers may be added."³⁶

37. In further support that the rate increase was just and reasonable based on the information known to the Board at the time they made their decision, Ms. Reagan testified that the Board's decision to increase rates was based on the "recommendation of our engineer, our counsel, general counsel, and of GTUA."³⁷

C. Revenue Requirement

38. In a rate appeal under TWC § 13.043, the ALJs are tasked with fixing the rates that the District should have fixed, if its rates were prejudicial, unreasonable, or otherwise unjust. To evaluate the reasonability of the rates being appealed, the ALJs evaluate the District's revenue requirement under TWC § 13.043(j).³⁸

³⁵ Hearing Transcript at 73:13-74:9.

³⁶ *Id.* at 74:9-11.

³⁷ *Id.* at 54:25-55:6.

³⁸ *Id.* at 61:21-23 (ALJ Siano noting, "[W]hat we're here to decide is what is the appropriate revenue requirement for the District[.]").

39. Jay Joyce is the District's rate expert.³⁹ He recommended an adjustment to the Board's adopted rates to recover the revenue requirements that he calculated in his independent rate study.⁴⁰ Mr. Joyce explained on redirect that he did not base his recommended rates on a revenue requirement of \$2,544,260.⁴¹ He explained that his role was not to formulate a rate from scratch, but instead to evaluate the rate that the District set. Mr. Joyce testified that he:

looked at the cost before debt service coverage, compared those to the revenues, determined that they would only result in a 1.12 [debt service coverage ratio], and based on the recommendation of the GTUA to the Board that they needed to target a 1.25, then I noted the additional amount of base charge of the \$2 dollars and 56 cents that would need to be added in order to achieve the 1.25 target debt service coverage.⁴²

Mr. Joyce testified that those calculations were included in Exhibit 3 in the work papers filed with his prefiled testimony.⁴³

40. Commission Staff witness Debi Loockerman recommended revenue requirements for the District based on the information known on October 9, 2018. In his prefiled rebuttal testimony, Mr. Joyce updated the revenue requirement that he recommended, incorporating an adjustment to miscellaneous revenues recommended by Ms. Loockerman in her direct testimony.⁴⁴ The adjustment subtracted \$95,075 in miscellaneous revenues from the District's revenue requirement.⁴⁵ The adjustment changed the District's net revenue

³⁹ Direct Testimony of Jay Joyce at 5 (Aug. 3, 2020).

⁴⁰ *Id.*

⁴¹ Hearing Transcript at 45:8-17.

⁴² *Id.* at 45:22-46:4.

⁴³ Direct Testimony of Jay Joyce at 5-11 (Aug. 3, 2020).

⁴⁴ See Rebuttal Testimony of Jay Joyce at 4 (Nov. 30, 2020).

⁴⁵ *Id.*

requirement before debt service coverage from \$2,544,260 to \$2,449,185, as reflected in Table JJJR-1 in Mr. Joyce's prefiled rebuttal testimony:⁴⁶

Exhibit JJJ-R-1	
Bear Creek Special Utility District Revised Revenue Requirements	
Total Net Revenue Requirements as Filed ¹	\$2,544,260
Adjustment ²	(95,075)
Revised Net Revenue Requirements	\$2,449,185
¹ Direct Testimony of Jay Joyce at 21 (Exhibit JJJ-10)	
² Direct Testimony of Debi Loockerman at 7:5	

41. Mr. Joyce further testified that the net revenue requirement of \$2,449,185 per year that Ms. Loockerman and he both recommend does not include debt service coverage.⁴⁷ As such, that number represents Commission Staff's recommendation of a 1.0 debt service coverage.⁴⁸ Mr. Joyce recommends including a debt service coverage of 1.25, which is reflected, using the adjusted net revenue requirement, in Table JJJR-2 in his prefiled rebuttal testimony:

⁴⁶ *Id.*; see also Hearing Transcript at 183:18-25.

⁴⁷ Hearing Transcript at 183:18-25.

⁴⁸ *Id.*

Exhibit JJJ-R-2

Bear Creek Special Utility District Revised Rate Adjustment to Appealed Rates	
Total Rate Revenues at Appealed Rates	\$2,607,636
Total Revised Net Revenue Requirements	(2,449,185)
Net Revenues Available for Debt Service Coverage	\$158,452
Net Revenues Required for 1.25 DSC	136,804
Total Net Revenues Required for 1.25 DSC	\$ 2,585,989
Revenue at Appealed Rates Over 1.25 DSC Amount	\$ 21,648
Divided by Rate Year Average Number of Connections	2,388
Divided by 12 Months	12
Reduction to Base Monthly Charge to Eliminate Excess	\$ 0.75
Sources: Joyce Direct at 25 (Exh. JJJ-15) Joyce Direct at 23 (Exh. JJJ-12) Exh. JJJ-R-1	

42. Mr. Joyce's testimony and the evidentiary record support that on October 9, 2018, the total net revenues required for 1.25 debt service coverage for the District's appealed rates that were effective from December 18, 2018, to February 17, 2020 was \$2,585,989 per year, as seen in the Table JJJ-R-2.⁴⁹

1. Debt Service Coverage

43. As noted earlier in this brief, the District does not contest Staff's recommendation regarding operation and maintenance expenses, debt service, or rate design or rate-case expense recovery.⁵⁰ The contested issue regarding the justness and reasonability of the District's appealed rates relates solely to debt service coverage.⁵¹

⁴⁹ Rebuttal Testimony of Jay Joyce at 4 (Nov. 30, 2020).

⁵⁰ See Hearing Transcript at 25:16-19 ("We essentially have accepted those recommendations.").

⁵¹ See *id.* at 25:19-22. ("Our sole issue with Staff relates to debt service coverage," so "that will be the focus of our efforts in the hearing today.").

1. Background on District's 1.25 Debt Service Target

44. The District, at the time of adoption of the rates, had decided to enter into a financing arrangement with GTUA in order to fund system improvements that were then and still are critical to the future viability of the system.⁵²
45. Debt service coverage is the ratio of available cash to required debt service payments for a given year.⁵³ GTUA targeted debt service coverage of 1.25 in its pro forma, a document that allows GTUA to evaluate whether there is adequate coverage projected for a particular financing.⁵⁴
46. The importance of adequate debt service coverage is explained in Garry Kimball's rebuttal testimony in this matter, as he testified that utility systems (especially water systems, where bills are generally a function of water purchased) are subject to swings in the weather, such that "wet summers can significantly reduce water sales and cause water bills to fall to a point below levels needed to cover the expenses of the system."⁵⁵
47. Mr. Kimball testified that, "If you take the financing market at face value, anything from 1.1x to 1.5x coverage is in the range of reasonable."⁵⁶ He testified that variances in the debt service coverage ratio from year to year on the pro forma reflects that 1.25 is not a hard-and-fast requirement, but a target: "1.25x is kind of the average for a system like Bear Creek."⁵⁷

⁵² Direct Testimony of Joe Helmberger at 10, 12 (Aug. 3, 2020) (citing Exhibit JH-4); see also Direct Testimony of Drew Satterwhite at 6 (Aug. 3, 2020) (describing cost of improvements).

⁵³ Rebuttal Testimony of Garry Kimball at 9 (Nov. 30, 2020).

⁵⁴ *See id.* (describing pro forma and debt service coverage).

⁵⁵ *Id.* at 10.

⁵⁶ Rebuttal Testimony of Garry Kimball at 13 (Nov. 30, 2020).

⁵⁷ *Id.* at 17.

2. *Commission Staff Witness Emily Sears: Recommendation and Cross-Examination*

48. Commission Staff witness Emily Sears recommended a debt service coverage of only 1.0 in her direct testimony,⁵⁸ which is essentially no coverage given that it only allows recovery of the exact amount of debt service in a year that has the exact amount of water usage by customers and exact amount of operation and maintenance costs as shown in the test year. Ms. Givens, who testified for Commission Staff regarding the revenue requirement after substituting in for Ms. Loockerman, confirmed that the revenue requirement had a debt service coverage of 1.0 only because she “based [it] on information she obtained from Staff Witness Sears.”⁵⁹ The District asked if Ms. Loockerman had used Mr. Joyce’s rate design and “changed the debt service coverage from 1.25 to 1.”⁶⁰ Ms. Givens agreed, testifying that the “Staff model begins with inputs from Mr. Joyce,” and “any changes were based upon recommendations of Ms. Sears.”⁶¹

49. The District strongly disputes the reasonability of a debt service coverage ratio of 1.0, which, as noted by the District’s rebuttal witness Garry Kimball in his prefiled rebuttal testimony, “is not coverage – it is the definition of no coverage.”⁶² Mr. Kimball, who has overseen hundreds of financings, further emphasized that he did not believe that the District would have obtained financing with a 1.0 debt service coverage.⁶³

⁵⁸ Direct Testimony of Emily Sears at 3 (Oct. 19, 2020). *See also* Hearing Transcript at 86:4 (“Ms. Sears provided the proposed ratio of 1.”); 83:16-17 (testifying that “the total revenue requirement that Staff recommended included debt service coverage of 0.”).

⁵⁹ Hearing Transcript at 84:11-13.

⁶⁰ *Id.* at 84:21-22.

⁶¹ *Id.* at 84:24-85:1.

⁶² Rebuttal Testimony of Garry Kimball at 23 (Nov. 30, 2020).

⁶³ *Id.* at 18.

50. The District cross-examined Ms. Sears to ascertain her familiarity and expertise regarding debt issuance in Texas, bond covenants and obligations. The questions the District put to Ms. Sears on these topics and her responses show that she is unfamiliar with financial issues facing utilities when they purchase or sell bonds on the open market and is not qualified to give expert testimony on this subject.

51. As she testified in response to the District's questions on cross-examination, Ms. Sears has never been retained to give advice to an issuer, a utility, about the sale of their bonds, and has never advised an entity whether it would be prudent to purchase bonds from a utility.⁶⁴

52. Ms. Sears further admitted that she has never sold or purchased bonds or debt through the TWDB or evaluated a utility's financial condition for the purpose of sale or purchase of bonds through the TWDB.⁶⁵

53. Ms. Sears admitted that she has never sold utility bonds or debt in the open marketplace, never purchased utility bonds or debt in the open marketplace, never evaluated the financial condition of a utility to give advice regarding the purchase or sale of bonds in the open market.⁶⁶

54. Ms. Sears testified that she did not believe that debt service coverage of 1.25 was required by GTUA for the District to obtain financing.⁶⁷ Ms. Sears testified, vaguely, that while "GTUA worked with Bear Creek to determine a rate," that GTUA did not necessarily "require" that rate.⁶⁸ She testified, "If GTUA wants to require [1.25 coverage] in order to

⁶⁴ Hearing Transcript at 108:9-16.

⁶⁵ *Id.* at 108:17-109:5.

⁶⁶ *Id.* at 107:20-108:8.

⁶⁷ *Id.* at 131:24-132:2.

⁶⁸ *Id.* at 133:25-135:16.

obtain a loan on their behalf, . . . that's up to GTUA." However, she went on, "[i]n this case, they did not."⁶⁹ Contradictorily, she agreed that at the time the District was considering increasing its rates, it had "that pro forma in front of them, and they had Mr. Satterwhite in front of them telling them this is what they needed to do to get funding."⁷⁰

55. The District asked Ms. Sears why she continued to disagree with a debt service coverage of 1.25 after both Mr. Satterwhite's and Mr. Kimball's testimony that the District adopted rates based on 1.25 debt service coverage based on their recommendation. The District asked if Ms. Sears's recommendation of 1.0 was based on the lack of evidence of a *written* debt service coverage requirement, citing a discovery response sponsored by her.⁷¹ She confirmed that her recommendation was influenced by the absence of a written requirement for coverage in the bond documents the District submitted in regard to its obtaining bonds from the TWDB through GTUA.⁷² It is important to note that these documents were not available to the Board at the time it made its decision.⁷³

56. Mr. Joyce testifies in Exhibit JJJ-15 and again on page 27 of his testimony that he included debt service coverage of 1.25 in his recommendation.⁷⁴

⁶⁹ Hearing Transcript at 133:16-24.

⁷⁰ *Id.* at 146:3-8.

⁷¹ Hearing Transcript at 112:21-113:7 (admitting RFI 1-3 as Bear Creek's Exhibit 10).

⁷² *Id.* at 114:12-17; 114:7-11 (admitting that the recommendation for 1.0 debt service coverage was based on the lack of evidence that higher coverage was required).

⁷³ The bond documents described by Ms. Sears are "dated after the date Bear Creek set the rates." Rebuttal Testimony of Camille Reagan at 4 (Nov. 30, 2020).

⁷⁴ Hearing Transcript at 144:4-145:5.

i. 17 CFR Section 240.15c2-12 and the Significance of a “Material Event”⁷⁵

57. In addition to not having any familiarity with the issues facing utilities seeking financing on the open market, Ms. Sears also admitted she did not understand the effect of a “material event” and is not familiar with the 17 CFR § 240.15c2-12.⁷⁶ 17 CFR § 240.15c2-12, of which the ALJs took judicial notice,⁷⁷ requires an entity that draws on its reserve to make a debt payment to declare its draw as a “material event.” As described by Mr. Kimball in his rebuttal testimony, declaring a “material event” damages the entity’s credit.⁷⁸

58. Mr. Kimball explained in his prefiled rebuttal testimony, which was not challenged by any party,⁷⁹ that if insufficient water sales caused GTUA to draw on debt service reserve funds, it would trigger a material event notice under 17 CFR § 240.15c2-12.⁸⁰ A material event disclosure would have a negative impact on the ability of both GTUA and the District to access the municipal bond market. Investors view such events as a credit negative and will require higher interest rates on bonds subsequently brought to market.⁸¹

ii. Inconsistent Prior Testimony

59. Ms. Sears admitted on cross-examination that her testimony was inconsistent with some of her prior recommendations in other cases, where she provided recommendations to the Commission for debt-service coverage that was above 1.0, even where nothing higher was

⁷⁵ The Hearing Transcript references “FEC Rule 240.15(c)2-12”; however, the correct reference is 17 C.F.R. § 240.15c2-12, “Municipal Securities Disclosure”.

⁷⁶ See *id.* at 117:12-14; 117:25-108:8 (admitting no familiarity with 17 CFR § 240.15(c)-2-12 and no knowledge of the requirements of the rule).

⁷⁷ *Id.* at 117:9-10.

⁷⁸ Rebuttal Testimony of Garry Kimball at 20-22 (Nov. 30, 2020).

⁷⁹ Hearing Transcript at 179:21-24 (Commission Staff waiving cross-examination of Mr. Kimball).

⁸⁰ Rebuttal Testimony of Garry Kimball at 20-22 (Nov. 30, 2020).

⁸¹ *Id.*

“required.”⁸² For example, in Docket 1489, Ms. Sears recommended a debt service coverage of 1.5, even though the city ordinance only required coverage of 1.25.⁸³

60. Based on the information known to the District when it set the rates, it would have made no sense to use a 1.0 debt service coverage, which, as Mr. Kimball testified, is “no coverage at all.”⁸⁴

D. Rate Design and Allocation (Preliminary Order Issue No. 6)

61. The District agrees with Commission Staff Witness Pokhrel regarding rate design methodology. In his direct prefiled testimony, he presented Commission Staff's recommendation for the rate design for the retail water service.⁸⁵ At the hearing, Mr. Pokhrel confirmed that “any increase in revenue requirement . . . is solely distributed through the base rates.”⁸⁶

E. Refund or Surcharges (Preliminary Order Issue No. 9)

62. As the District has demonstrated that the appealed rate was just and reasonable, no refunds or surcharges are necessary in this case.

63. If the ALJs determine that refunds or surcharges are necessary because they recommend an increase or reduction in the revenue requirement, including debt service coverage, that refunds or surcharges should be spread over a period of time equal to the amount of time

⁸² Hearing Transcript at 135:21-139:9.

⁸³ *Id.* at 136:3-137:21 (citing *Application for the City of Austin DBA Austin Water for Authority to Change Water and Wastewater Rates*, Docket No. 49189, Direct Testimony of Emily Sears at 5-12 (Nov. 15, 2019)).

⁸⁴ Rebuttal Testimony of Garry Kimball at 23 (Nov. 30, 2020).

⁸⁵ Direct Testimony of Roshan Pokhrel at 4 (Oct. 19, 2020).

⁸⁶ Hearing Transcript at 104:3-7.

the appealed rates were in effect (December 2018 through February 17, 2020) and spread among the District's customers equally.

**V. RATE CASE EXPENSES (Contested)
(Preliminary Order Issue No. 7)**

64. Though rate case expenses were noted as a “contested issue” in the Parties’ Agreed Briefing Outline, the District believes that the reasons that the issue was contested have largely been resolved. The District and Commission Staff agree that rate case expenses may be recovered over a 24-month period, contrary to the original recommendation included in Ms. Loockerman’s prefiled testimony.

65. In Commission Staff’s direct prefiled testimony, Ms. Loockerman recommended that the District’s rate case expenses be recovered through a monthly surcharge over a five-year period.⁸⁷ She further proposed to limit the recovery of rate case expenses to the *earlier* of five years or until such time as the District fully recovers the allowed rate case expenses.⁸⁸

66. The District disagreed with Ms. Loockerman’s recommendation and argued that rate case expenses should be recovered within two years. A “two-year recovery period is reflective of the timeframe typically used for rate case expense recovery.”⁸⁹

67. A two-year recovery period is the “general practice,” as stated in prior testimony by Ms. Loockerman. In a prior water-rate proceeding, the administrative law judge wrote in his Proposal for Decision, “Ms. Loockerman testified that the Commission’s general practice

⁸⁷ Direct Testimony of Debi Loockerman at 10 (Oct. 19, 2020).

⁸⁸ *Id.*

⁸⁹ Rebuttal Testimony of Jay Joyce at 9-10 (Nov. 30, 2020).

is to allow rate-case expenses to be surcharged to customers over two years, but the Commission has occasionally allowed recovery over a longer period.”⁹⁰

68. The District questioned Anna Givens regarding her conclusions on rate case expenses, which she adopted from Ms. Loockerman’s testimony and supported with her own supplemental rebuttal testimony. Ms. Givens testified that her recommendation was that the District could recover rate case expenses that are reasonable and necessary through a surcharge as long as they were submitted and considered prior to the final order in this proceeding.⁹¹ Ms. Givens testified that she recommends a “surcharge rider” that would terminate once the District “collects in totality the 339,000.”⁹² Ms. Givens’s “recommendation and testimony is that the District surcharge the rate-case expense over 24 months.”⁹³

69. Ms. Givens testified that the Commission “has expressed a desire to move away from a separate rate-case expense proceeding and try to handle rate-case expenses in the existing case.”⁹⁴ She recommended the surcharge as an “attempt to avoid a separate rate-case proceeding and provide a more comprehensive amount so that recovery is granted now and is not pushed on to future ratepayers.”⁹⁵

70. There are no extenuating circumstances in this case that would justify a longer period for recovery of rate case expenses than the typical two-year period. The rate case expense

⁹⁰ *Appeal by BFE Water Company of the Action of the City of Cresson*, Docket No. 44061, PFD at 50 (Jan. 6, 2015).

⁹¹ Hearing Transcript at 91:11-92:12.

⁹² *Id.* at 96:17-97:4.

⁹³ *Id.* at 97:22-23.

⁹⁴ Hearing Transcript at 101:15-17. Judge Siano stated that the ALJs preferred not to have a separate rate case expense proceeding. *Id.* at 196:10-12.

⁹⁵ *Id.* at 101:15-21.

surcharge should be calculated based on a 24-month recovery, and the surcharge should continue until all reasonable and necessary rate case expenses are fully recovered.


71. The District has provided invoices and other documentation to demonstrate that it has incurred rate case expenses of \$396,305.96 through the date of the hearing. The District will supplement its documentation supporting rate case expenses as this matter continues.

72. Given the amount of rate case expense incurred through the date of the hearing, the District proposes a monthly surcharge of \$6.92 per customer for 24 months. This amount is reasonable and appropriate.

VI. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Bear Creek Special Utility District respectfully requests that since the District has met, and exceeded, its burden of proof that the appealed rates fulfill the requirements of Texas Water Code § 13.043(j), the Administrative Law Judges dismiss the appeal and grant such other relief to which Bear Creek Special Utility District may be entitled.

Respectfully submitted,

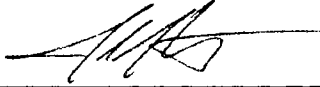
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ATTORNEY FOR BEAR CREEK SPECIAL
UTILITY DISTRICT

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 and/or Certified Mail Return Receipt Requested to all parties on this the 5th day of March, 2021.

A handwritten signature in black ink, appearing to read 'J. Carlton', is written over a horizontal line.

John Carlton

**SOAH DOCKET NO. 473-19-5674.WS
PUC DOCKET NO. 49351**

**RATEPAYERS APPEAL OF THE
DECISION BY BEAR CREEK SPECIAL
UTILITY DISTRICT TO CHANGE
RATES**

§
§
§
§
§

**BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS**

**BEAR CREEK SPECIAL UTILITY DISTRICT'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. Proposed Findings of Fact

General and Procedural Findings

1. Bear Creek Special Utility District ("District") is a special utility district operating under Chapters 49 and 65 of the Texas Water Code.
2. The District's Public Water System Identification Number is TX0430037.
3. The District's Certificate of Convenience and Necessity number is 10066.
4. On March 18, 2019, certain ratepayers filed a petition under Texas Water Code § 13.043(b), to appeal the decision by the District to change rates.
5. The appealed rates were effective from December 18, 2018 to February 17, 2020.
6. On April 17, 2019, Staff for the Public Utility Commission of Texas ("Commission") filed their recommendation on the administrative completeness of the petition.
7. On May 10, 2019, the District's Motion for Entry of a Protective Order was granted.
8. On May 23, 2019, the District responded in opposition to the petition.
9. On June 21, 2019, the Commission referred the case to the State Office of Administrative Hearings ("SOAH"), requesting the assignment of a SOAH ALJ to conduct a hearing and issue a proposal for decision, if necessary.
10. In its referral order, the Commission required certain ratepayers and the District to file a list of issues by July 3, 2019, and allowed Commission Staff and other parties to file lists of issues by that date if desired.
11. On July 18, 2019, the Commission entered a Preliminary Order including nine issues to be addressed in the SOAH proceeding.

12. On August 14, 2019, a preliminary hearing was held, during which the Parties expressed interest in mediation.
13. On August 15, 2019, SOAH Order No. 3 was issued, referring the case to mediation and suspending the procedural schedule adopted in SOAH Order No. 2.
14. The parties filed a Joint Status Report and Request for Extension on October 28, 2019, requesting that the abatement of the proceeding be extended an additional 90 days. On November 4, 2019, SOAH Order No. 4 was issued, extending the abatement and directing the Parties to file a status report by January 30, 2020.
15. The Parties filed a Joint Status Report and Request for Extension on January 30, 2020, requesting the abatement of the proceeding be extended for an additional 90 days. On February 3, 2020, SOAH Order No. 5 was issued, extending the abatement and directing the Parties to file a status report by April 29, 2020.
16. The Parties filed a Joint Status Report on April 29, 2020, requesting the abatement of the proceeding be extended for an additional 30 days. SOAH Order No. 6, issued on May 8, 2020, extended the abatement and directed the Parties to file “a motion to dismiss this proceeding; a status report regarding the status of the resolution; or an agreed proposed procedural schedule” no later than June 2, 2020.
17. The Parties filed a Joint Status Report on June 2, 2020, requesting the abatement come to an end and requesting two additional weeks to file a proposed procedural schedule.
18. On June 19, 2020, SOAH Order No. 7 was issued, adopting a modified procedural schedule and setting a hearing on the merits for January 28-29, 2021.
19. On August 3, 2020, the District prefiled its direct testimony.
20. On September 4, 2020, Ratepayers’ Representatives prefiled their direct testimony.
21. On October 19, 2020, Commission Staff prefiled its direct testimony.
22. On November 30, 2020, the District prefiled its rebuttal testimony.
23. On January 20, 2021, Commission Staff moved to substitute Anna Givens for Debi Loockerman and for Ms. Givens to adopt Ms. Loockerman’s testimony. On February 5, 2021, SOAH Order No. 11 was issued granting Commission Staff’s request for Ms. Givens to adopt Ms. Loockerman’s testimony.
24. On January 28, 2021, a hearing on the merits was held via Zoom videoconference attended by the District, Ratepayers’ representatives, and Commission Staff, before ALJs Siano and Brite.
25. On February 5, 2021, the Parties filed an agreed briefing outline and proposed procedural schedule., which was adopted by the ALJs on February 8, 2021, in SOAH Order No. 12.

26. Under SOAH Order No. 12, the Parties' initial post-hearing briefs are due on March 5, 2021 and response briefs are due March 22, 2021.

Background

1. The District began as Lavon Water Supply Corporation in 1965.
2. In 2013, Lavon Water Supply Corporation converted to Lavon Special Utility District.
3. In 2016, the Texas Commission on Environmental Quality approved the name change from Lavon Special Utility District to Bear Creek Special Utility District.
4. The District only provides water service.
5. The District is governed by a Board of seven directors elected by the qualified voters of the district (the "Board"). Each director serves for a three-year term.
6. The District currently serves over 8,000 residents at 2,422 connections to the system. The current service area is approximately 21 square miles.
7. The District's water system consists of a total of 4,050 gallons per minute (gpm) in pumping capacity, and 1.920 million gallons of total water storage.
8. The District's facilities consist of three pressure planes with a combined total of four elevated storage tanks, and three ground storage tanks. The system includes two pump stations.
9. The District relies on Sections 49.212 and 49.2122 of the Texas Water Code as authority for its policies on collecting and holding deposit money under the law.
10. As of the date of the Board of Directors' decision to increase rates in 2018, the District had 2,311 customers.
11. A ¾" meter is standard for residential connections, and in 2018, a single ¾" meter cost \$4,250.00 to connect.
12. In 2018, when the District made its decision to change rates, the Deposit Fee for homeowners was \$200.00 per applicant and the Deposit Fee for tenants was \$250.00 per applicant.
13. The District purchases treated surface water from the North Texas Municipal Water District ("NTMWD").
14. The District, prior to its conversion and name change, has had a contract with NTMWD since Lavon Water Supply Corporation was created in 1965.
15. At the District's Board Meeting on February 13, 2018, engineers from Kimley-Horn presented proposed water supply improvements that were needed at the District's Pump Station No. 2 as a result of the development within the City Limits of Lavon.

16. On March 6, 2018, the Board approved the scope of services by Kimley-Horn.
17. On May 9, 2018, the Board approved Resolution 2018-003, granting Greater Texoma Utility Authority (“GTUA”) authority to proceed with the development of an application to the Texas Water Development Board (“TWDB”) to finance the water supply improvement project.
18. NTMWD’s preliminary 2019 rates were presented to the Board as well as estimated rate increases for the next 10 years. NTMWD projected the rates to increase 10% annually over the next decade.
19. On September 11, 2018, the NTMWD notified all wholesale customers that it was proposing a different methodology to develop the annual budget for 2019, which would decrease the revenue requirements, resulting in a 5% increase, instead of a 12% increase.
20. On October 9, 2018, the Board met and approved the water facilities construction contract presented by the GTUA. GTUA required the District to increase its base rates by \$10 per customer per month for GTUA to issue debt for the District and obtain approval of the proposed financing from TWDB.
21. Although GTUA strives for 1.25 debt service coverage, in this case the GTUA settled for a rate increase of \$10 per meter per month that provided 1.18 coverage in the lowest year of the pro forma.
22. The appealed rates produced at least 1.18 debt service coverage over the first five years of the bond, which was acceptable to the GTUA even though it was below the 1.25 debt service coverage target.
23. The petitioning ratepayer’s appeal contends that the December 18, 2018 rate increase was excessive.

Debt Service Coverage

1. Unlike tax-secured municipal bonds, where the tax base is set each year and the tax rate is adjusted annually to match recurring bond payments, debt service recovery for debt secured by system revenue and issued by utility systems (especially water systems, where bills are generally a function of water purchased) is subject to swings in the weather that impact operating costs and system revenues.
2. To the extent that insufficient water sales were to cause a draw on debt service reserve funds, it would trigger a material event notice under SEC Rule 240.15(c)-2-12, 17 CFR § 240.15c2-12 (“Municipal Securities Disclosure”).
3. A draw on reserves is more likely to be needed if an entity budgets 1.0 debt service coverage. A debt service coverage ratio of 1.0 is not appropriate for debt secured by system revenue bonds.

4. If an entity budgets 1.0 coverage, that means, by definition, that it has not budgeted for coverage.
5. The District's debt service should be 1.25 as recommended by GTUA and should not be reduced.

Revenue Requirement Summary

1. The use of the cash needs method was appropriate in this case.
2. The District's net revenue before debt service coverage should be \$2,449,185.
3. Additional net revenue of \$ 136,804 for debt service coverage sufficient to provide for 1.25 debt service coverage is required.
4. The District's net revenue including 1.25x debt service coverage should be \$ 2,585,989.

Rate Case Expenses

1. A two-year recovery period for rate case expenses is reasonable.
2. The rate case expense surcharge should be calculated based on a 24-month recovery, and the surcharge should continue until all reasonable and necessary rate case expenses are fully recovered.

II. Proposed Conclusions of Law

1. This rate appeal was brought under Texas Water Code § 13.043, which permits a ratepayer to appeal a decision regarding water and sewer service rates within 90 days of the effective date of the rate change, so long as the petition initiating the appeal is signed by the lesser of 10,000 or 10 percent of those ratepayers whose rates have been changed and are eligible to appeal.
2. Jurisdiction by the TCEQ, the Commission, and SOAH was and is proper in this case under Texas Water Code (“TWC”) § 13.043(b).
3. SOAH has jurisdiction over matters in this case relating to the conduct of the hearing and issuance of a proposal for decision, if needed, pursuant to Texas Government Code § 2003.049.
4. In this proceeding, the utility bears the burden of proof to establish that the contested rates are just and reasonable. 16 Tex. Admin. Code § 24.12.
5. Based on the information known to the District when it made the decision to raise its rates, the reasoning behind the increase and the amount of increase were both just and reasonable as a matter of law.
6. The Petition is an appeal governed by TWC § 13.043. Such section provides for a de novo proceeding in which the Commission fixes rates at the level that those rates should have been. However, the Commission is limited to considering only the information that was available to the District at the time it made its decision and evidence of reasonable expenses incurred in the appeal proceedings.
7. In an appeal under TWC § 13.043(j), the Commission must also “use a methodology that preserves the financial integrity of the retail public utility” and recognizes the District's determination of customer classes.
8. Under TWC § 13.043, the Commission must consider allowing the recovery of the District’s reasonable expenses incurred in the appeal proceedings.
9. Under TWC § 13.043(j), the Commission must ensure that the rates are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.
10. It is a fundamental principle of ratemaking that regulated public utilities are entitled to rates which will allow them to collect total revenues equal to their cost of service. *Suburban Util. Corp. v. Public Util. Comm’n*, 652 S.W.2d 358, 362 (Tex. 1983).
11. The revenue requirement for a utility that uses the cash needs method can include O&M expenses, debt service, and a reasonable cash reserve account. *Black v. City of Killeen*, 78 S.W.3d 686, 694 (Tex. App.-Austin 2002, pet. denied).

12. As to the District's request to recover its reasonable rate case expenses in this proceeding, the Commission may consider evidence of reasonable expenses incurred by the District in the appeal proceedings. Tex. Water Code § 13.043(e).
13. A "surcharge" is "an authorized rate to collect revenues over and above the usual cost of service." 16 Tex. Admin. Code § 24.21(k)(1).
14. The District may recover the expenses it has incurred in this proceeding, to the extent those expenses were reasonable and necessary. 16 Tex. Admin. Code §24.41(e)(2).
15. The District may not recover estimated future rate case expenses in this proceeding. 16 Tex. Admin. Code §24.41(e)(2).
16. The District may recover its reasonable rate case expenses over 24 months through a surcharge.