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RATEPAYERS' APPEAL OF THE	§	BEFORE THE STATE OFFICE
DECISION BY BEAR CREEK SPECIAL	§	
UTILITY DISTRICT TO CHANGE	§	OF
RATES	§	
	§	ADMINSTRATIVE HEARINGS

COMMISSION STAFF'S REPLY BRIEF

Respectfully Submitted,

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**SOAH DOCKET NO. 473-19-5674.WS
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RATEPAYERS' APPEAL OF THE DECISION BY BEAR CREEK SPECIAL UTILITY DISTRICT TO CHANGE RATES	§ § § § §	BEFORE THE STATE OFFICE OF ADMINSTRATIVE HEARINGS
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COMMISSION STAFF'S REPLY BRIEF

I. INTRODUCTION

The Ratepayer's appeal of the increase of \$10 per month in base rate charges adopted by Bear Creek Special Utility District's (Bear Creek) effective December 18, 2018 to February 17, 2020 should be granted by implementing the Staff (Staff) of the Public Utility Commission of Texas (Commission) recommended adjustments.

Bear Creek argues that the Commission should increase the appealed rates to include a debt service coverage ratio of 1.25.¹ Specifically, Bear Creek argues that a 1.25 debt service coverage would be prudent and reasonable, and a 1.25 debt service coverage ratio is the target for the Greater Texoma Utility Authority.² Staff recommends a debt service coverage ratio of 1.0 as it believes increasing Bear Creek's debt service coverage to 1.25 would not be necessary or reasonable.

II. VALIDITY OF THE PETITION (Uncontested Issue)

A. PROTESTS

B. EFFECTIVE DATE OF RATE CHANGE

III. INTERIM RATES (UNCONTESTED ISSUE)

¹ Bear Creek Ex. 4 at 26.

² Bear Creek Ex. 4 at 26.

IV. JUST AND REASONABLE RATES (CONTESTED ISSUE)

In its initial brief, Bear Creek argues that “the only contention between the parties about the appealed rates is the debt service coverage they incorporate.”³ This is a mischaracterization of Staff’s position. Staff maintains its stance that the rates set by Bear Creek are not just and reasonable under Texas Water Code (TWC) § 13.043(j), and require adjustment to the revenue requirement, a redistribution of the base rates, and an adjustment to the debt service coverage ratio.

A. REQUIREMENTS OF 13.043(J)

Staff maintains its position that the rates recommended by Staff witness Mr. Roshan Pokhrel meet the standard of review established in TWC § 13.043(j).

B. INFORMATION AVAILABLE TO BEAR CREEK AT TIME OF RATE CHANGE

Bear Creek states in its initial brief that the Bear Creek Board of Directors (the Board) was advised by Mr. Drew Satterwhite in obtaining financing from the Texas Water Development Board (TWDB) and advised Bear Creek to increase its rates by \$10 per meter.⁴ Mr. Satterwhite did not advise the Board to set a debt service coverage ratio of 1.25. Mr. Satterwhite’s recommendation only resulted in a 1.18 debt service coverage ratio, which Mr. Satterwhite agreed with at the hearing.⁵ This is the information the Board used when setting the rates at issue. The Board could have chosen to implement a 1.25 debt service coverage ratio if they so desired but chose not to. Now, Bear Creek is trying to increase its debt service coverage ratio retroactively through this proceeding with Mr. Jay Joyce’s testimony. Therefore, it would not be appropriate under TWC § 13.043(j) to increase Bear Creek’s debt service coverage ratio to 1.25.

C. REVENUE REQUIREMENT

Bear Creek states in its initial brief that it agrees with Staff’s recommended revenue requirement of \$2,449,184 for Bear Creek for the appealed rates.⁶ This is incorrect, as Bear

³ Bear Creek Special Utility District’s Initial Post-Hearing Brief at 7 (March 5, 2021). (Bear Creek’s Initial Brief).

⁴ Bear Creek’s Initial Brief at 9.

⁵ Tr. At 71: 15-25, 72: 1-2. (Satterwhite Cross) (Jan. 28, 2021).

⁶ Bear Creek Initial Brief at 7, and 11-12; Direct Testimony of Debi Looockerman, Staff Ex. 3 at 6.

Creek admits, because it does not take into account Bear Creek's requested debt service coverage. It has been well established that if the debts service coverage increases, so would the revenue requirements when using the cash-needs method.⁷

In addition, Bear Creek agrees with Staff's adjustment of Miscellaneous Revenues.⁸ Thus, Staff believes its revenue requirement of \$2,449,184 is just and reasonable and preserves the financial integrity of the utility.

1. DEBT SERVICE COVERAGE

Staff recommends a debt service coverage ratio of 1.0 for Bear Creek. A debt service coverage ratio of 1.0x is appropriate for Bear Creek's rates because it takes into account Bear Creek's ability to pay its debts with cash on hand, Greater Texoma Utility Authority's (GTUA) reserve, and the ability of Bear Creek SUD to change its rates without being subject to Commission review. Bear Creek requests that the Commission increase Bear Creek's revenues to achieve a debt service coverage ratio of 1.25.⁹

Bear Creek argues in its initial brief that Ms. Emily Sears is not qualified to give expert testimony. This is patently false. Ms. Sears has been employed by the Commission since January 1, 2015.¹⁰ Prior to working with the Commission, she was employed by the Public Utility commission for the Commonwealth of Pennsylvania from April 2008.¹¹ In that time, Ms. Sears has testified in 49 different cases with 16 of those being specifically with the Commission.¹² Therefore, Ms. Sears is qualified to give expert testimony in this case.

Bear Creek argues in its brief that Bear Creek "adopted base rates on 1.25 debt service coverage."¹³ This is incorrect based on the testimony of Mr. Satterwhite. Mr. Satterwhite's recommended \$10 increase to all customers only resulted in a 1.18 debt service coverage ratio,

⁷ Direct Testimony of Debi Loockerman, Staff Ex. 3 at 9; Table 1.

⁸ Staff Ex. 3 at 5.

⁹ Bear Creek Ex. 4 at 27.

¹⁰ Direct Testimony of Emily Sears, Staff Ex. 1 at 1.

¹¹ Staff Ex. 1, Attachment ES-2.

¹² Staff Ex. 1, Attachment ES-2.

¹³ Bear Creek's Initial Brief at 17.

according to Mr. Satterwhite at the hearing.¹⁴ Then, Mr. Jay Joyce states in his testimony that the implemented rates resulted in a 1.12 debt service coverage ratio.¹⁵ Staff continues to recommend a debt service coverage ratio of 1.0x is appropriate for Bear Creek's rates because it takes into account Bear Creek's ability to pay its debts with cash on hand, Greater Texoma Utility Authority's (GTUA) reserve, and the ability of Bear Creek SUD to change its rates without being subject to Commission review.

As stated in Staff's initial brief, Bear Creek's operating accounts have a total balance of \$1,837,898.45 and total debt service of \$547,216.¹⁶ This means that Bear Creek is able to pay its outstanding debt service from its operating account while still having significant cash on hand to continue operating and still continue to collect payments from ratepayers. In addition, Bear Creek has access to the GTUA as a source of funding.¹⁷ While a GTUA reserve alone would not be sufficient to cover Bear Creek's debt service, when also considering Bear Creek's cash on hand, the risk of Bear Creek defaulting on its debt diminishes significantly. Furthermore, no debt service coverage is required by any bond covenants and the appealed rates provide a debt service coverage of 1.12.¹⁸ Lastly, Bear Creek is not subject to Commission review for rate adjustments.¹⁹ Therefore, when Bear Creek adopted the appealed rates in October 2018, it had the opportunity to set a debt coverage ratio of 1.25.²⁰ Additionally, Bear Creek can adjust its rates in a shorter timeframe than water utilities subject to Commission review.²¹

Bear Creek argues that insufficient water sales could cause Bear Creek to draw on debt service reserve funds and would trigger a material event under 17 CFR § 240.15c2-12.²² Bear Creek ignores the gauntlet of mistakes and mismanagement that would need to occur for Bear Creek to reach the point of insufficient water sales it states could trigger a material event. As stated by Mr.

¹⁴ Tr. At 71: 15-25, 72: 1-2. (Satterwhite Cross) (Jan. 28, 2021).

¹⁵ Bear Creek Ex. 4 at 26.

¹⁶ Bear Creek Ex. 4 at 19, Exhibit JJJ-8 at 69.

¹⁷ Direct Testimony of Emily Sears, Staff Ex. 1 at 3-4.

¹⁸ Staff Exhibit 9 at 2 (Aug. 10, 2020); Bear Creek Ex. 4 at 26.

¹⁹ Staff Ex. 1 at 4.

²⁰ Tr. at 156: 13-24 (Sears Cross) (Jan. 28, 2021).

²¹ Staff Ex. 1 at 4.

²² Bear Creek's Initial Brief at 18.

Sears at the hearing, Bear Creek would have to under recover its revenue requirement, management would have to fail to increase rate, despite knowing that they are under recovering, and then Bear Creek would have to exhaust all of its unrestricted cash on hand.²³ Bear Creek also ignores the fact that they have three times their debt service in cash on hand.²⁴

Lastly, Bear Creek argues that Ms. Sears' testimony in this case is inconsistent with testimony she previously provided in Docket no. 49189.²⁵ While it is correct to say that Ms. Sears provided different recommendation in this case than she did in her previous testimony, that is because the facts are different in each case. Ms. Sears stated at the hearing that she recommended a higher debt service coverage in her previous case because the utility used that higher debt service coverage ratio when setting its rates.²⁶ As established above, Bear Creek did not use its requested 1.25 debt service coverage ratio when setting the rates at issue.

Bear Creek's requests that the Commission increase Bear Creek's revenues to achieve a debt service coverage ratio of 1.25 in this proceeding is inappropriate²⁷ and to state that a 1.25 debt service coverage ratio was implemented with the rates at issue is just materially wrong.

D. RATE DESIGN & ALLOCATION

Staff recommended the following rates for Bear Creek based on the American Water Works Association (AWWA) recommended meter equivalency factors for each size:²⁸

Monthly Base Charge (includes 0 gallons)		Gallage Charge per 1,000 Gallons	
Meter Size	Rate	Usage	Rate
¾"	\$29.00	0 to 5,000	\$6.35
1"	\$48.33	5,001 to 10,000	\$7.05
2"	\$154.67	10,001 to 15,000	\$8.09
3"	\$290.00	15,001 to 25,000	\$10.00
4"	\$483.33	Over 25,001	\$11.27
6"	\$966.67		

²³ Tr. at 168: 2-14 (Sears Cross) (Jan. 28, 2021).

²⁴ Tr. at 168: 2-14 (Sears Cross) (Jan. 28, 2021).

²⁵ *Application of the City of Austin dba Austin Water for Authority to Change Water and Wastewater Rates*, Docket no. 49189, Direct Testimony of Emily Sears (Nov. 15, 2019).

²⁶ Tr. at 138: 2-10 (Sears Cross) (Jan. 28, 2021).

²⁷ Bear Creek Ex. 4 at 27.

²⁸ Staff Ex. 2 at 10.

Bear Creek does not dispute Staff's adjustment to the base charges.²⁹ Therefore, Staff recommends the above base charges using the meter equivalency factors.

E. REFUND AND SURCHARGES

Bear Creek argues in its initial brief that refunds and surcharges are not necessary.³⁰ As previously discussed Bear Creek asserts that it agrees with Staff's rate design.³¹ Even without any further adjustments to the rate at issue, Bear Creek would still have to issue refunds and surcharges to implement the meter equivalency factors. In addition, to implement Bear Creek's request for a debt service coverage ratio of 1.25, Bear Creek recommends increasing all monthly fixed charges by \$2.56 above the appealed rates.³² Therefore, Bear Creek's recommendation is inconsistent with its prior assertion.

Based on Bear Creek's agreement to using meter equivalency factors in the rates at issue, Staff continues to recommend, Bear Creek has been over-collecting from its smaller meters and under-collecting from its larger meters since December 18, 2018, the effective date of its proposed rates.³³ Therefore, Staff continues to recommend the following refund and surcharge amounts:

²⁹ Bear Creek's Initial Brief at 19.

³⁰ Bear Creek's Initial Brief at 19.

³¹ Bear Creek's Initial Brief at 19.

³² Bear Creek Ex. 4 at 27.

³³ Staff Ex. 3 at 11, Table 2.

Table 2

A	B	C	D= C-B
Meter Size	BSEACD Implemented Rate	Staff Recommended Rate	Monthly (Refund) or Surcharge
¾"	\$35.00	\$29.00	(\$6.00)
1"	\$60.00	\$48.33	(\$11.67)
2"	\$98.00	\$154.67	56.67
3"	\$186.00	\$290.00	104.00
4"	\$362.00	\$483.33	121.33
6"	714.00	966.67	252.67

Bear Creek argues in the alternative that any rate adjustments be made should be “spread over a period of time equal to the amount of time the appealed rates were in effect (December 2018 through February 17, 2020) and spread among the District’s customers equally.”³⁴ Staff agrees with this approach as outlined in its initial brief.

V. RATE CASE EXPENSES (CONTESTED ISSUE)

Bear Creek argues that rate case expenses should be collected over 24 months. Staff maintains its position that no less than a 24-month surcharge is reasonable. However, Staff would be unopposed to using a longer surcharge timeline as outlined in Staff’s Initial Brief. Staff provided the 36-month and 48-month calculations at the request of the Judge.³⁵

Bear Creek does not dispute Staff’s position on unsupported rate case expenses.³⁶

Bear Creek’s does not dispute its unsupported expenses cannot be claimed as reasonable and necessary in its initial brief and Bear Creek should be allowed to collect rate case expenses over a 24-month period at the minimum.

³⁴ Bear Creek’s Initial Brief at 19-20.

³⁵ Tr. at 92: 15-25, 93: 1-22 (Givens Cross) (Jan.28, 2021).

³⁶ Bear Creek’s Initial Brief at 20-22.

VI. CONCLUSION

Staff respectfully requests for the ALJs to issue a proposal for decision consistent with Staff's recommendations.

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on March 19, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664

/s/ Kourtnee Jinks
Kourtnee Jinks