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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

COMMISSION STAFF'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

Respectfully Submitted,

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I. INTRODUCTION

On May 10, 2021, the State Office of Administrative Hearings (SOAH) Administrative Law Judges (ALJs) issued a Proposal for Decision in this proceeding. Staff commends the ALJs for the well-researched and reasoned decision. While Staff supports many of the ALJs' findings, Staff (Staff) of the Public Utility Commission of Texas (Commission) excepts to the ALJs decision regarding how much of a debt service coverage ratio is appropriate, and Staff continues to recommend a debt service coverage ratio of 1.0 as it believes increasing Bear Creek Special Utility District's (Bear Creek) debt service coverage to 1.25 is not necessary or reasonable.

II. EXCEPTIONS

A. Revenue Requirement - Debt Service Coverage

Staff excepts to the PFD's recommendation that a debt service coverage of 1.25, and accordingly including $136,804 in Bear Creek's revenue requirement as reasonable.[1] Staff recommended 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.

First, the PFD states that Staff's concern that the 1.25 debt service coverage ratio "would put Bear Creek above the appealed rates is mooted by Bear Creek's acceptance in rebuttal

[1] Proposal for Decision (PFD) at 21 (May 18, 2021).

testimony of a $95,075 decrease in revenue requirement."[2] Staff acknowledges that Bear Creek in its rebuttal testimony does adjust their requested revenue requirement of $2,544,260 to $2,4999,185.[3] However, the $95,075 decrease in revenue requirement does not include debt service coverage.[4] As Staff notes in its initial brief, the difference in net revenue requirements for a 1.0 debt service coverage and a 1.25 debt service coverage is $136,804.[5]

Additionally, while the PFD states that "how the District originally *arrived* at its rates is largely irrelevant to the rates the District *should have set*: the District is free to support an entirely different set of rates."[6] Staff agrees with the ALJs statement, but Staff believes that how Bear Creek arrived at its rates does provide insight into the rates Bear Creek should have set. Staff additionally believes that Bear Creek has failed to support that a 1.25 debt service coverage ratio is appropriate for the appealed rates.

Bear Creek states in its initial brief that the Bear Creek Board of Directors (the Board) was advised by Bear Creek witness 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.[7] 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.[8] 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 the testimony of District witness Mr. Jay Joyce who stated in his testimony that the implement rates resulted in a 1.12 debt service coverage ratio but now advocates for a 1.25 debt service coverage.[9]

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[2] *Id.* at 11.

[3] Bear Creek Ex. 4 at 4-5.

[4] *Id.*

[5] Staff's Initial Brief at 6.

[6] PFD at 13 (May 18, 2021).

[7] Bear Creek's Initial Brief at 9.

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

[9] Bear Creek Ex. 4 at 26.

Staff continues to support a 1.0 debt service coverage ratio as appropriate for Bear Creek. 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.[10] 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.[11] 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.[12] Lastly, Bear Creek is not subject to Commission review for rate adjustments.[13] Therefore, when Bear Creek adopted the appealed rates in October 2018, it had the opportunity to set a debt coverage ratio of 1.25. Additionally, Bear Creek can adjust its rates in a shorter timeframe than water utilities subject to Commission review.[14]

The ALJ's statement 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 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.[15] As stated by Mr. 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.[16] Bear Creek also ignores the fact that they have three times their debt service in cash on hand.[17]

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[10] Bear Creek Ex. 4 at 19, Exhibit JJJ-8 at 69.

[11] Direct Testimony of Emily Sears, Staff Ex. 1 at 3-4.

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

[13] Staff Ex. 1 at 4.

[14] Staff Ex. 1 at 4.

[15] PFD at 20-21 (May 18, 2021).

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

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

Lastly, the ALJ's statement that "Ms. [Emily] Sears has previously testified in support of setting a debt service coverage ratio higher than 'required,'" is immaterial to this case.[18] 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.[19] As established above, Bear Creek did not use its requested 1.25 debt service coverage ratio when setting the rates at issue.

Overall, the appropriate debt service coverage ratio for the appealed rates is 1.0.

B. Debt Service Coverage – Rate Design

Staff agrees with the ALJ's position that "rates should be set that redistribute the District's base rates in accordance with the meter equivalency factors supported by the American Water Works Association."[20] Additionally, Staff agrees with the ALJ's finding that Bear Creek's "failure to base its rate design on meter equivalencies has resulted in over-collecting from smaller meters and under-collecting from larger meters, resulting in rates that are unreasonably preferential to large meter customers and prejudicial and discriminatory against smaller meter customers" since December 18, 2018, the effective date of its proposed rates.[21] However, Staff excepts to the rate design adopted in the PFD as it implements a debt service coverage ratio of 1.25 and increases all monthly fixed charges by $2.56 above the appealed rates.[22] Staff continues to support the rate design presented below and in the direct testimony of Staff witness Debi Loockerman:[23]

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[18] PFD at 11 (May 18, 2021).

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

[20] PFD at 21 (May 18, 2021).

[21] PFD at 15 (May 18, 2021).

[22] *Id.*

[23] 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

III. CONCLUSION

Overall, Staff supports most of the PFD’s recommendations. However, Staff continues to recommend that the Commission adopt a 1.0 debt service coverage ratio for Bear Creek.

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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 July 16, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Kourtnee Jinks
Kourtnee Jinks