



Control Number: 49351



Item Number: 149

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

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RATEPAYERS' APPEAL OF THE	§	PUBLIC UTILITY COMMISSION
DECISION BY BEAR CREEK SPECIAL	§	
UTILITY DISTRICT TO CHANGE	§	OF TEXAS
RATES	§	

DRAFT FINAL ORDER

This Order addresses the ratepayers' appeal of the decision of Bear Creek Special Utility District (Bear Creek SUD) to increase water rates effective December 18, 2018. The State Office of Administrative Hearings (SOAH) administrative law judges (ALJs) filed a proposal for decision recommending the Commission grant the appeal. The SOAH ALJs' specifically recommend the Commission find the rates appealed are not just and reasonable, design new rates using meter equivalency factors, direct Bear Creek SUD to issue refunds and collect surcharges of revenues over- and under-collected under the rates appealed, set rates that would allow Bear Creek SUD to maintain a debt-service-coverage ratio of 1.25, and allow Bear Creek SUD to recover the rate-case expenses it incurred in this proceeding through a monthly surcharge assessed over 36 months.

The Commission agrees with the majority of the ALJ's determinations in the proposal for decision, as corrected and clarified. However, the Commission disagrees with and rejects the SOAH ALJs conclusion to set rates that would allow Bear Creek SUD to maintain a debt-service-coverage ratio of 1.25. For the reasons discussed below, the Commission sets rates that would allow Bear Creek SUD to maintain a debt-service-coverage ratio of 1.10. In accordance with these decisions, the Commission grants the ratepayers' appeal and fixes the rates Bear Creek SUD should have set effective December 18, 2018. The Commission adopts the proposal for decision, including findings of fact and conclusions of law, except as discussed in this Order.

I. Background

Bear Creek SUD is a retail public utility that, as of October 9, 2018, provided retail water service to approximately 2,384 connections in an around the City of Lavon, Texas in Collin and Rockwell counties.¹ In early 2018, Bear Creek SUD's board of directors chose to implement two

¹ BCSUD Ex. 1, Direct Testimony of Camille Reagan at 11:2-8.

projects with an estimated total cost of \$5.33 million.² Bear Creek SUD contacted Greater Texoma Utility Authority to learn about financing options for the projects.³ Greater Texoma recommended Bear Creek SUD obtain low-interest financing under the Texas Water Development Board's drinking water state revolving fund, which offered a 1.35% interest rate subsidy in 2018.⁴

In May 2018, Bear Creek SUD's board of directors granted Greater Texoma authority to apply for \$7.49 million in financing from the drinking-water state revolving fund program.⁵ Greater Texoma advised Bear Creek SUD that the Texas Water Development Board would not approve its request for financing unless it increased rates.⁶ After reviewing Bear Creek SUD's finances, Greater Texoma directed Bear Creek SUD to implement a \$10 per meter per month rate increase in 2018 followed by a \$5 per meter per month rate increase in 2019.⁷

On October 9, 2018, Bear Creek SUD's board of directors approved a \$10 increase to the monthly minimum rates of each Bear Creek SUD customer class effective December 18, 2018.⁸ Bear Creek SUD did not support the rate increase with a cost-of-service study. In November 2018, the Texas Water Development Board approved Greater Texoma's financing proposal.⁹ Greater Texoma issued the bonds on December 17, 2018 and began making loan disbursements to Bear Creek SUD in January 2019.¹⁰ Although the bond resolution for the contract revenue bonds was not adopted until the bonds were issued in December, Bear Creek SUD testified that its directors were aware of its terms at the time they approved the rates appealed.¹¹

² See BCSUD Ex. 2, Direct Testimony of Joe Helmberger, Exhibit JH-4 (showing estimated probable costs for projects 16.2.1 and 18).

³ BCSUD Ex. 1, Direct Testimony of Camille Reagan at 20:15-17.

⁴ See BCSUD Ex. 3, Direct Testimony of Drew Satterwhite at 10:5-11.

⁵ BCSUD Ex. 1, Direct Testimony of Camille Reagan at 21:6-11.

⁶ *Id.* at 23:4-6.

⁷ BCSUD Ex. 3, Direct Testimony of Drew Satterwhite at 16:2-9.

⁸ BCSUD Ex. 1, Direct Testimony of Camille Reagan at 12:8; *id.*, Exhibit CR-6 (providing the rate order approving the rates appealed).

⁹ BCSUD Ex. 3, Direct Testimony of Drew Satterwhite at 17:9-14.

¹⁰ *Id.*

¹¹ *Id.* at 6:10-14.

Bear Creek SUD's ratepayers filed a timely appeal of Bear Creek's October 9, 2018 decision to increase rates. The rates appealed remained in effect until replaced by Bear Creek SUD on February 17, 2020.¹² Bear Creek SUD's ratepayers did not appeal the February 17, 2020 rates. Therefore, the rates effective as of February 17, 2020 are not subject to this appeal.

II. Discussion

A. The Rates Appealed

Under TWC § 13.043(j), the Commission must find that the rates appealed are unreasonably preferential, prejudicial, or discriminatory before setting just and reasonable rates.¹³

Bear Creek SUD's water rates include a monthly minimum rate, gallonage rates, and miscellaneous fees.¹⁴ It is common industry practice to design monthly minimum rates using meter equivalency factors.¹⁵ Designing rates using meter equivalency factors distributes costs equitably across customer classes in accordance with the principle of cost causation. Customers taking service from large meters pay a proportionally higher base rate than customers taking service from smaller meters.¹⁶ Bear Creek SUD did not use meter equivalency factors to design the rates appealed; rather, the district designed the rates by applying a flat \$10 increase to monthly minimum rates for each meter size.¹⁷

Commission Staff argued that this oversight resulted in rates that under-collected from customers with larger meters and over-collected from customers with small meters.¹⁸ Accordingly, Commission Staff recommended the SOAH ALJs design new rates using the

¹² BCSUD Ex. 4, Direct Testimony of Jay Joyce at 8:8-11.

¹³ See Tex. Water Code § 13.043(j) (TWC); *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994, writ denied).

¹⁴ See Staff Ex. 2, Direct Testimony of Roshan Pokhrel at 7:1-5 (providing a schedule of the rates appealed and the rates in effect before the rates appealed).

¹⁵ *Id.* at 10:1-10 (citing Am. Water Works Ass'n, *AWWA Manual M1: Principles of Water Rates, Fees, and Charges* at 78, 323–25 (6th ed. 2012)).

¹⁶ See *id.*, Exhibit RP-2 (showing the American Water Works Association's recommended meter equivalency factors).

¹⁷ See *id.* at 7:1-5.

¹⁸ See *id.* at 10:1–11:3.

standard meter equivalency factors recommended by the American Water Works Association.¹⁹ Bear Creek SUD did not contest Commission Staff's recommendation.

The SOAH ALJs recommended the Commission find the rates appealed to be unreasonably preferential, prejudicial, and discriminatory, fix rates that comply with the standard meter equivalency factors recommended by the American Water Works Association, and direct Bear Creek SUD to refund amounts over-collected and surcharge amounts under-collected from customers over a 14-month period.²⁰ The SOAH ALJs further recommended the Commission direct Bear Creek SUD provide refunds and collect surcharges according a schedule provided in the proposal for decision.²¹

The Commission concludes the rates appealed are unreasonably preferential, prejudicial, and discriminatory. Additionally, the Commission finds that it is both appropriate to fix rates that comply with the standard meter equivalency factors recommended by the American Water Works Association and it is appropriate to direct Bear Creek SUD to refund amounts over-collected and surcharge amounts under-collected from customers over a 14-month period. However, the Commission declines to adopt the SOAH ALJs' proposed refund and surcharge schedule for Bear Creek SUD for the reasons discussed below. Accordingly, the Commission adds new conclusion of law 8A to reflect its conclusion concerning the rates appealed.

B. Revenue Requirement

Having determined that the rates appealed are unreasonably preferential, prejudicial, and discriminatory, the Commission must fix the rates Bear Creek SUD's board of directors should have fixed on October 9, 2018.²² Before the Commission can design new rates, it must first determine a reasonable revenue requirement for Bear Creek SUD. The Texas Water Code limits the information available to the Commission in setting this revenue requirement. The Commission, hearing this appeal de novo, may only consider information available to Bear Creek SUD's board of directors on October 9, 2018; any information that shows, or tends to show, the

¹⁹ *Id.*

²⁰ Proposal for Decision at 15 (May 18, 2021).

²¹ *Id.*

²² See TWC § 13.043(j); *City of Fort Worth*, 875 S.W.2d at 336.

information available to Bear Creek SUD's board of directors on October 9, 2018; and evidence of reasonable expenses incurred by Bear Creek SUD in this proceeding.²³

Bear Creek SUD did not defend the rates appealed. Instead, Bear Creek SUD performed a cost-of-service study and recommended the Commission adopt new rates based on that cost-of-service study.²⁴ The financial data used to generate this study was extracted from the financial data in Bear Creek SUD's 2018 budget and adjusted for known and reasonable changes.²⁵ This budget information was available to Bear Creek SUD's board of directors on October 9, 2018.²⁶

Bear Creek SUD calculated the cost-of-service study's recommended revenue requirement using the cash-basis method.²⁷ A revenue requirement calculated using the cash-basis method includes a retail public utility's operation and maintenance expenses, annual debt service, and annually recurring cash-funded capital expenditures (collectively, its net revenue requirement).²⁸ It may also include additional debt-service coverage if it is appropriate for the retail public utility to maintain a certain debt-service-coverage ratio.²⁹

The SOAH ALJs' recommended the Commission adopt Commission Staff's proposed net revenue requirement of \$2,449,185.³⁰ The proposed net revenue requirement includes \$2,213,958 in operation and maintenance expenses, \$547,216 in annual debt service, \$277,922 for annually recurring cash-funded capital expenditures, and a \$589,912 deduction for miscellaneous revenues.³¹ Bear Creek SUD did not oppose the proposed net revenue requirement, but did oppose Commission Staff's recommendation on additional debt-service coverage.

²³ TWC § 13.043(e).

²⁴ BCSUD Ex. 4, Direct Testimony of Jay Joyce at 6:2-7.

²⁵ *Id.* at 7:31-34.

²⁶ *Id.* at 7:34-35.

²⁷ *Id.* at 8:12-14; Staff Ex. 3, Direct Testimony of Debbie Loockerman at 7:18-8:2.

²⁸ Staff Ex. 3, Direct Testimony of Debbie Loockerman at 8:16-9:3.

²⁹ *Id.* at 8:3-13.

³⁰ Proposal for Decision at 20.

³¹ Staff Ex. 3, Direct Testimony of Debbie Loockerman, Exhibit DL-1 (providing Commission Staff's recommended revenue requirements for Bear Creek SUD's rates).

Commission Staff recommended that the Commission not include any additional debt-service coverage in Bear Creek SUD's revenue requirement.³² As of September 30, 2018, Bear Creek SUD had a balance of \$1,837,898.45 in its operating accounts and a balance of \$656,414.91 in a board restricted construction account.³³ This information was available to the Bear Creek SUD board of directors as of October 9, 2018. Also available to the board of directors were the terms of Greater Texoma's December 2018 bond declaration, which stated Bear Creek SUD was to begin making monthly deposits of \$6,177.48 in to a reserve fund managed by Greater Texoma on January 1, 2019.³⁴ These deposits will be made until \$370,648.94—one year's debt service on the contract bonds—is reserved.³⁵ The cost of the deposits is included in the net revenue requirement under the annual debt service amount.³⁶

Commission Staff argued that, given Bear Creek SUD's substantial operating account balances and the reserve account commitment, it is reasonable for the Commission to fix rates designed without additional debt-service coverage.³⁷ Commission Staff emphasized that even with a 1.0 debt-service-coverage ratio it would require gross mismanagement over a multi-year period for Bear Creek SUD to default on its debt-service payments.³⁸ Commission Staff also emphasized that the Texas Water Development Board did not require Bear Creek SUD to maintain a specific debt-service-coverage ratio to obtain financing.³⁹ Lastly, Commission Staff argued that should Bear Creek SUD need a higher debt-service-coverage ratio in the future, it could do so quickly because it does not need Commission approval to increase rates.⁴⁰

³² Staff Ex. 1, Direct Testimony of Emily Sears at 3:8-9.

³³ BCSUD Ex. 4, Direct Testimony of Jay Joyce, Exhibit JJJ-8 (giving the balances of various accounts held by Bear Creek SUD).

³⁴ BCSUD Ex. 3, Direct Testimony of Drew Satterwhite at 6:10-14, 15:12-3; *id.*, Exhibit DS-4, Bond Resolution at 18.

³⁵ *Id.* at 15:18–16:1.

³⁶ *Id.*, Exhibit JJJ-6.

³⁷ Staff Ex. 1, Direct Testimony of Emily Sears at 3:15–4:2.

³⁸ *Id.* at 3:18–4:2.

³⁹ *Id.* at 4:13-17.

⁴⁰ *Id.* at 4:7-12.

Bear Creek SUD, in defense of its suggested 1.25 debt-service-coverage ratio, argued that allowing it to recover additional debt-service coverage of \$135,804 annually would insulate the district from fluctuations in revenues and expenses due to weather, and that a debt-service-ratio would be insufficient.⁴¹ The district stressed there would be serious negative financial consequences should it ever withdraw money from either its operating reserves or the Greater Texoma reserve account, and that rate increases were not always politically feasible.⁴² Lastly, Bear Creek SUD emphasized that Greater Texoma testified that Bear Creek SUD would not have obtained financing from the Texas Water Development Board if the district had fixed rates designed to provide a debt-service-coverage ratio of 1.0.⁴³

The SOAH ALJs concluded that a 1.25 debt-service-coverage ratio is necessary to preserve the financial integrity of Bear Creek SUD⁴⁴ and recommended the Commission allow Bear Creek SUD to recover additional debt-service coverage of \$135,804.⁴⁵ This conclusion is founded on three determinations. The Commission disagrees with the SOAH ALJs' conclusion and addresses their determinations in turn.

The SOAH ALJs' first determination was that Bear Creek SUD would not have obtained financing without a debt-service-coverage ratio of 1.25.⁴⁶ This determination is founded on two findings: that it is uncontested that Bear Creek SUD needed a 1.25 debt-service-coverage ratio to obtain financing from the Texas Water Development Board and that the Texas Water Development Board relied on Greater Texoma's pro forma representations in approving the financing.⁴⁷

Regarding the first finding, there is insufficient evidence to find that the Texas Water Development Board requires a first-time applicant for financing under the drinking water state reserve fund program to maintain a 1.25 debt-service-coverage ratio. Moreover, neither the bond declaration nor the agreements between Greater Texoma and Bear Creek SUD required Bear Creek

⁴¹ BCSUD Ex. 8, Rebuttal Testimony of Garry Kimball at 6:10–7:7.

⁴² *Id.* at 6:15-22.

⁴³ *Id.* at 18:13-16.

⁴⁴ Proposal for Decision at 14.

⁴⁵ *See id.* at 14.

⁴⁶ *Id.* at 11.

⁴⁷ *Id.*

SUD to maintain a 1.25 debt-service-coverage ratio.⁴⁸ Regarding the second finding, the Commission may not consider the information the Texas Water Development Board relied on in making its decision on the financing request.⁴⁹ The Texas Water Development Board did not approve Bear Creek SUD's financing request until November 2018;⁵⁰ Bear Creek SUD's board of directors approved the rates appealed on October 9, 2018.⁵¹ Therefore, the information emphasized by the SOAH ALJs is beyond the scope of evidence the Commission may consider in fixing rates.

The SOAH ALJs' second determination was that a 1.0 debt-service-coverage ratio would not preserve Bear Creek SUD's financial integrity because it assumes that conditions during the test year will be repeated and does not account for fluctuations in revenues due to weather and unplanned expenses.⁵² The SOAH ALJs reasoned that a 1.0 debt-service-coverage ratio could result in unstable rates, which could put Bear Creek SUD at financial risk by impeding its access to financial markets.⁵³ The SOAH ALJs also stressed that any withdrawals from the Greater Texoma reserve fund would trigger a material event under the rules of the U.S. Securities and Exchange Commission, which would also impede Bear Creek SUD's access to financial markets.⁵⁴

The SOAH ALJ's determination that the lack of additional debt-service-coverage would not preserve Bear Creek SUD's financial integrity omits any consideration of the substantial balances in Bear Creek SUD's operating accounts. The approximately \$1.84 million total balance is sufficient to cover Bear Creek SUD's annual debt service for more than three years; it would take years of mismanagement for Bear Creek SUD to default on its debt-service payments. Even if Bear Creek SUD's cash reserves were depleted, it could rely on the amounts paid into the reserve account managed by Greater Texoma to make its debt payments. And, if necessary, Bear Creek SUD could implement new rates to address new expenses, an ability Bear Creek SUD

⁴⁸ BCSUD Ex. 3, Direct Testimony of Drew Satterwhite, Exhibit DS-4.

⁴⁹ TWC § 13.043(e).

⁵⁰ BCSUD Ex. 3, Direct Testimony of Drew Satterwhite at 17:9-14.

⁵¹ BCSUD Ex. 1, Direct Testimony of Camille Reagan, Exhibit CR-6.

⁵² Proposal for Decision at 12-13.

⁵³ *Id.* at 12.

⁵⁴ *Id.*

demonstrated when it set new rates effective February 17, 2020.⁵⁵ Under these circumstances, it would be unreasonable for Bear Creek SUD to collect \$135,804 over its net revenue requirement annually.

The SOAH ALJs' third determination was that the Commission cannot adjust the rates appealed without first making a finding that a 1.25 debt-service-coverage ratio would result in rates that are unreasonably preferential, prejudicial, or discriminatory.⁵⁶ The SOAH ALJs asserted that because there is no evidence to support such a finding, the Commission cannot fix new rates.⁵⁷ This determination is unfounded. The statutory provision and case cited by the SOAH ALJs' in support of their assertion, TWC § 13.043(j) and *Tex. Water Comm'n v. City of Fort Worth*, do not require the Commission to make such a finding before fixing new rates.

TWC § 13.043(j) and the *City of Fort Worth* decision requires the Commission to find that *the rates appealed* under TWC § 13.043 are unreasonably preferential, prejudicial, or discriminatory before setting just and reasonable rates.⁵⁸ It also requires the Commission to set rates that are not unreasonably preferential, prejudicial, or discriminatory but sufficient, equitable, and consistent in application to each class of customers.⁵⁹ Lastly, it requires the Commission to set rates that will maintain the financial integrity of the retail public utility.⁶⁰ It does not require the Commission to make the finding described by the SOAH ALJs before setting just and reasonable rates.

Accordingly, the Commission declines to adopt the SOAH ALJs' recommended 1.25 debt-service-coverage ratio and the SOAH ALJs' discussion in the proposal for decision concerning debt-service-coverage ratios. The Commission also declines to adopt the rates recommended by the SOAH ALJs.

⁵⁵ BCSUD Ex. 4, Direct Testimony of Jay Joyce at 8:8-11.

⁵⁶ Proposal for Decision at 14.

⁵⁷ *Id.* (citing TWC § 13.043(j)).

⁵⁸ See TWC § 13.043(j); *City of Fort Worth*, 875 S.W.2d at 336.

⁵⁹ TWC § 13.043(j)

⁶⁰ *Id.*

Based on the evidence before the Commission, in particular the substantial balances in Bear Creek SUD's operating accounts, the Commission concludes that it is appropriate for the Commission to fix rates designed to maintain a debt-service-coverage ratio of 1.10. Accordingly, the Commission adds new findings of fact 36A through 36E and modifies proposed findings of fact 36, 41, and 44 to reflect its conclusion. The Commission also deletes proposed findings of fact 42, 43, 45, and 47 because they are not supported by a preponderance of the evidence.⁶¹

C. Rates, Refunds and Surcharges, and Rate-Case Expenses

Because the Commission does not adopt the SOAH ALJs' recommended debt-service-coverage ratio, the Commission directed Commission Staff to calculate rates based on a debt-service-coverage ratio of 1.10. Commission Staff filed new rate figures based on a debt-service-coverage ratio of 1.10 on August 10, 2021. These rate figures include new a new base-rate schedule, a new surcharge and refund schedule, and a new rate-case expense surcharge schedule.

The base rates prepared by Commission Staff are based on a total revenue requirement of \$2,503,906. This total revenue requirement consists of a net revenue requirement of \$2,449,185 and additional debt-service coverage of \$54,722. The additional debt-service coverage amount is sufficient for Bear Creek SUD to maintain a debt-service-coverage ratio of 1.10.

The Commission concludes that Commission Staff's proposed rates are just and reasonable; are not unreasonably preferential, prejudicial, or discriminatory; are sufficient, equitable, and consistent in application to each class of customers; and will preserve the financial integrity of Bear Creek SUD.⁶² The Commission also concludes that a retail public utility may recover the reasonable rate-case expenses it incurs in an appeal brought under TWC § 13.043(e).

The Commission adopts Commission Staff's proposed base rates, surcharges and refunds, rate-case expense surcharge, and total revenue requirement. Accordingly, the Commission adds new findings of fact 25C through 25D, 55A, and 55B and modifies proposed findings of fact 46 and 48 to reflect its conclusions.

⁶¹ Tex. Gov't Code § 2003.049(g)(1)(B).

⁶² TWC § 13.043(j).

D. Other Changes

In addition to the changes discussed above, the Commission makes the following changes to the proposal for decision.

The Commission adds new finding of fact 1A to more precisely describe Bear Creek SUD and modifies proposed findings of fact 7, 8, 17, 18, 19, and 20 to more completely describe the procedural history of this proceeding. Additionally, the Commission adds new findings of fact 24A, 25A, and 25B and modifies proposed finding of fact 25 to memorialize the evidence filed in the record at and after the hearing on the merits. Commission also adds new findings of fact 28A, 33A, and 33B and modifies proposed findings of fact 26 and 28 to better describe the events leading to and occurring after the filing of this appeal.

The Commission modifies proposed conclusion of law 5 by dividing it into two conclusions of law, 5 and 5A, to clearly describe the filing requirements met by the ratepayers. Similarly, the Commission modifies proposed conclusion of law 7 by dividing it into two conclusions of law, 7 and 7A, to accurately and clearly describe the standard of review applicable to this appeal and the evidence the Commission may consider in this appeal. The Commission also modifies proposed conclusions of law 14, 16, and 17 to accurately describe various requirements of TWC § 13.043 that apply to this appeal. Lastly, the Commission adds new conclusion of law 5B to specify that certain rates are not subject to this appeal and adds new conclusion of law 13A to address the effective date and termination date applicable to the rates fixed by this Order.

The Commission also makes non-substantive changes for such matters as capitalization, spelling, grammar, punctuation, style, citations, and readability.

III. Findings of Fact

The Commission adopts the following findings of fact.

General and Procedural Findings

1. Bear Creek Special Utility District is a political subdivision operating under chapters 49 and 65 of the Texas Water Code.
- 1A. Bear Creek SUD is a district created under article III, section 52 of the Texas Constitution that provides water service to household users.

2. Bear Creek SUD's water utility certificate of convenience and necessity number is 10066.
3. Bear Creek SUD is governed by its board of directors, which is elected by the qualified voters of Bear Creek SUD.
4. On October 9, 2018, Bear Creek SUD's board of directors approved a \$10 increase to the monthly minimum charges for each of its customer classes.
5. On or about November 19, 2018, Bear Creek SUD sent notice of its rate increase to its customers.
6. The rate increase approved on October 9, 2018 took effect beginning December 18, 2018.
7. On March 18, 2019, certain Bear Creek SUD ratepayers timely filed a petition for review of Bear Creek SUD's water rates effective December 18, 2018 with both the Commission and Bear Creek SUD.
8. The petition for review was signed by 300 or approximately 12.6% of Bear Creek SUD's 2,384 active connections at the time the rates appealed went into effect.
9. The petition for review was filed within 90 days after the effective date of the rate change.
10. No party requested an effective date other than the original one proposed by Bear Creek SUD.
11. The appealed rates were in effect from December 18, 2018, to February 17, 2020, when a new change in Bear Creek SUD's rates took effect.
12. On April 29, 2019 in Order No. 2, the Commission ALJ found the petition for review administratively complete.
13. On June 21, 2019, the Commission referred the proceeding to SOAH, requesting the assignment of a SOAH ALJ to conduct a hearing and issue a proposal for decision, if necessary.
14. On July 18, 2019, the Commission filed a preliminary order including nine issues to be addressed in the SOAH proceeding.
15. On June 19, 2020 in SOAH Order No. 7, the SOAH ALJs adopted a procedural schedule and set a hearing on the merits for January 28 through 29, 2021.

16. No party moved to establish interim rates.
17. On August 3, 2020, Bear Creek SUD filed the direct testimonies of Camile Reagan, Drew Satterwhite, Jay Joyce, John J. Carlton, and Joe Helmberger, P.E.
18. On September 4, 2020, the ratepayers filed the direct testimony of Deborah Fato.
19. On October 19, 2020, Commission Staff filed the direct testimonies of Emily Sears, Roshan Pokhrel, and Debi Loockerman.
20. On November 30, 2020, Bear Creek SUD filed the rebuttal testimonies of Ms. Reagan, Mr. Satterwhite, Mr. Joyce, and Gary Kimball.
21. On January 20, 2021, Commission Staff moved to substitute Anna Givens for Ms. Loockerman and for Ms. Givens to adopt Ms. Loockerman's testimony. The SOAH ALJs granted Commission Staff's motion on February 5, 2021 in SOAH Order No. 11.
22. On January 28, 2021, a hearing on the merits was held before ALJs Linda H. Brite and Christiaan Siano via Zoom videoconference and attended by Bear Creek SUD, the ratepayers, and Commission Staff.
23. On February 8, 2021 in SOAH Order No. 12, the SOAH ALJs set a post-hearing briefing schedule.
24. Under SOAH Order No. 12, the parties' initial post-hearing briefs were due on March 5, 2021, and response briefs were due on March 19, 2021.

Evidentiary Record

- 24A. At the hearing on the merits, the SOAH ALJs admitted the following items into the evidentiary record:
 - a. the direct testimonies and exhibits of Ms. Reagan, Mr. Helmberger, Mr. Satterwhite, Mr. Joyce, and Mr. Carlton on behalf of Bear Creek SUD;
 - b. the rebuttal testimonies of Ms. Reagan, Mr. Satterwhite, and Mr. Kimball and the rebuttal testimony and exhibits of Mr. Joyce on behalf of Bear Creek SUD;
 - c. Commission Staff's responses to Bear Creek SUD's first request for information;

- d. Commission Staff's responses to Bear Creek SUD's second request for information;
 - e. the direct testimonies of Ms. Sears, Ms. Pokhrel, and Ms. Loockerman on behalf of Commission Staff;
 - f. the supplemental direct testimony of Ms. Givens on behalf of Commission Staff;
 - g. Bear Creek SUD's second supplemental response to Commission Staff's second request for information, question number 2-1;
 - h. Bear Creek SUD's non-confidential responses to Commission Staff's third request for information, question number 3-6;
 - i. Bear Creek SUD's response to Commission Staff's fourth request for information, question number 4-20;
 - j. Bear Creek SUD's response to Commission Staff's amended fifth request for information, question number 5-4;
 - k. Bear Creek SUD's second, third, and fifth supplemental responses to Commission Staff's sixth request for information, question number 6-4;
 - l. Bear Creek SUD's first supplemental responses to Commission Staff's seventh request for information, question numbers 7-3, 7-26, and 7-27; and
 - m. the direct testimonies of Ms. Fato and Michaelangelo Dillon on behalf of the ratepayers.
25. In SOAH Order No. 13 filed on April 16, 2021, the SOAH ALJs directed Commission Staff and Bear Creek SUD to file an exhibit supporting the rate-case expenses amount mentioned in their briefs and a motion to re-open the record and admit the exhibit into evidence.
- 25A. On April 23, 2021, the Bear Creek SUD and Commission Staff filed an agreed motion to reopen the record and admit evidence supporting the rate-case expenses amount mentioned in their briefs.

- 25B. In SOAH Order No. 14 filed on May 3, 2021, the SOAH ALJs reopened the record and admitted evidence supporting Bear Creek SUD's rate-case expenses into the evidentiary record. The record closed on May 3, 2021.
- 25C. On August 2, 2021, the Commission directed Commission Staff to perform a number running to calculate rates based on a debt-service-coverage ratio of 1.10.
- 25D. On August 10, 2021, Commission Staff filed the number running requested by Commission Advising.

Background

26. At the time Bear Creek SUD set the rates appealed it provided retail water service to approximately 2,384 connections in and around the City of Lavon, Texas in Collin and Rockwell counties.
27. Bear Creek SUD purchases treated water from the North Texas Municipal Water District.
28. At the time Bear Creek SUD set the rates appealed, it had identified two projects from its water master plan, each concerning its pump station number 2, as critically necessary to serve its customers at full system buildout. As of October 2018, these projects had a combined estimated cost of \$5.33 million.
- 28A. In early 2018, Bear Creek SUD contacted the Greater Texoma to learn about possible financing options for its needed improvements.
29. On May 9, 2018, Bear Creek SUD's board of directors approved resolution 2018-003, granting Greater Texoma to proceed with the development of an application to the Texas Water Development Board to finance the water supply improvement project.
30. On May 9, 2018, the Bear Creek SUD board of directors voted to obtain a loan from the Texas Water Development Board in the amount of \$7,490,000 with an interest rate of 2.41%
31. Greater Texoma instructed Bear Creek SUD to increase its base rates by \$10 per customer per month for Greater Texoma to issue debt for Bear Creek SUD and obtain approval of the proposed financing from the Texas Water Development Board.

- 32. Although Greater Texoma strives for 1.25 debt service coverage, the Greater Texoma accepted a rate increase of \$10 per meter per month that provided 1.18 coverage in the lowest year of the *pro forma*.
- 33. The appealed rates produced at least 1.18 debt service coverage over the first five years of the bond, which was acceptable to the Greater Texoma even though it was below the 1.25 debt service coverage target.
- 33A. The rates subject to this appeal remained in effect until they were supplanted by new rates on February 17, 2020.
- 33B. The ratepayers did not appeal the rates effective February 17, 2020.

Revenue Requirement

- 34. The use of the cash needs method to establish a revenue requirement was appropriate in this case.
- 35. Bear Creek SUD's net revenue before debt service coverage should be \$2,449,185.
- 36. The net revenue requirement of \$2,449,185 is reasonable.
- 36A. On September 30, 2018, Bear Creek SUD's operating accounts had a total balance of \$1,837,898.45.
- 36B. On September 30, 2018, Bear Creek SUD's board restricted-construction account had a balance of \$656,414.91.
- 36C. Under the terms of Greater Texoma's December 17, 2018 bond declaration, beginning January 1, 2019 Bear Creek SUD must make monthly deposits of at least \$6,177.48 into a reserve fund managed by Greater Texoma until the balance of the account is equal to one year's debt service on Greater Texoma's contract bonds. The purpose of this reserve fund is to prevent Bear Creek SUD from defaulting on its debt-service payments to Greater Texoma.
- 36D. The Bear Creek SUD board of directors was aware of the terms of Greater Texoma's December 17, 2018 bond declaration on October 9, 2018.

- 36E. Neither the terms of Greater Texoma's December 17, 2018 bond declaration nor the terms of the agreements between Bear Creek SUD and Greater Texoma required Bear Creek SUD to maintain a specific debt-service-coverage ratio.
37. Bear Creek SUD's debt is secured by water system revenue.
38. Bear Creek SUD's debt service recovery is subject to swings in the weather that significantly impact operating costs and system revenues.
39. To the extent that insufficient water sales were to cause a draw of Greater Texoma's debt service reserve funds, it would trigger a material event notice under U.S. Securities and Exchange Commission Rule 240.15(c)-2-12, 17 C.F.R. § 240.15c2-12 (Municipal Securities Disclosure).
40. A material event would have negative financial consequences to Bear Creek SUD and Greater Texoma.
41. A draw on reserves is more likely to be needed if an entity budgets for less debt-service coverage.
42. DELETED.
43. DELETED.
44. It is appropriate for the Commission to fix rates designed to maintain a debt-service-coverage ratio of 1.10.
45. DELETED.
46. Additional debt-service coverage of \$54,722 is sufficient to provide for a 1.10 debt-service-coverage ratio.
47. DELETED.
48. It is appropriate for the Commission to fix rates designed using a gross revenue requirement of \$2,503,906.

Rate Design

49. The rate design of the rates appealed failed to account for meter equivalency factors.

50. By failing to properly account for meter equivalencies, the rates appealed over-collected from smaller meters and under-collected from larger meters.
51. The appealed rates are not just and reasonable.
52. The appealed rates are unreasonably preferential to larger meter customers and prejudicial and discriminatory against smaller meter customers.
53. The appealed rates are not sufficient, equitable, and consistent in application to each class of customers.
54. It is appropriate for the Commission to fix rates designed using the meter equivalency factors supported by the American Water Works Association.
55. The Commission should order refunds and surcharges to effectuate the redistribution over a 14-month period.
- 55A. It is appropriate for the Commission to fix the following rates effective December 18, 2018, which the board of directors of Bear Creek SUD should have fixed on October 9, 2018.

<u>Meter Size</u>	<u>Monthly Base Rate</u>	<u>Gallage Charge</u>
3/4"	<u>\$30.81</u> (Includes 0 gallons)	<u>\$6.35</u> per 1,000 gallons from 0 to 5,000 gallons
1"	<u>\$51.35</u>	<u>\$7.05</u> per 1,000 gallons from 5,001 to 10,000 gallons
2"	<u>\$164.32</u>	<u>\$8.09</u> per 1,000 gallons from 10,001 to 15,000 gallons
3"	<u>\$308.10</u>	<u>\$10.00</u> per 1,000 gallons from 15,001 to 25,000 gallons
4"	<u>\$513.50</u>	<u>\$11.27</u> per 1,000 gallons from 25,001+ gallons
6"	<u>\$1,027.00</u>	

- 55B. It is appropriate for Bear Creek SUD to issue and collect on a monthly basis the following refunds and surcharges over a 14-month period.

<u>Meter Size</u>	<u>Monthly Refund or Surcharge per Customer</u>	<u>Total Refund or Surcharge per Customer</u>
3/4"	<u>(\$4.19)</u>	<u>(\$58.66)</u>
1"	<u>(\$8.65)</u>	<u>(\$121.10)</u>
2"	<u>\$66.32</u>	<u>\$928.48</u>
3"	<u>\$122.10</u>	<u>\$1,709.40</u>

Rate Case Expenses

56. The rate-case expenses of \$409,654.58 are reasonable.

57. A 36-month recovery period for rate case expenses is reasonable.
58. It is appropriate for Bear Creek SUD to collect \$409,654.58 in rate-case expenses through a surcharge of \$4.77 per connection per month over a 36-month period. The surcharge should continue until the earlier of 36 months after the rider takes effect or \$409,654.58 is fully recovered.

IV. Conclusions of Law

The Commission adopts the following conclusions of law.

1. Bear Creek SUD is a special utility district governed by TWC chapters 49 and 65 and a retail public utility as defined in TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
2. The Commission has jurisdiction to consider this appeal under TWC § 13.043(b)(4) and 16 TAC § 24.101.
3. SOAH, upon referral, has jurisdiction to conduct a hearing on the merits and issue a proposal for decision under Texas Government Code § 2003.049.
4. Notice of the hearing was provided consistent with Texas Government Code §§ 2001.051 through 2001.052 and 16 TAC § 22.55.
5. The petition for review was timely filed with both the Commission and Bear Creek SUD in compliance with TWC § 13.043(c) and 16 TAC § 24.101(b).
- 5A. The petition for review was signed by more than 10% of Bear Creek SUD ratepayers whose rates were changed by the rates appealed and who were eligible to file an appeal under TWC § 13.043(b) in compliance with TWC § 13.043(c), 16 TAC §§ 24.101(b) and (d), and 16 TAC § 24.103(b).
- 5B. Bear Creek SUD's water rates effective February 17, 2020 are not subject to this appeal.
6. Under 16 TAC § 24.12, Bear Creek SUD had the burden of proof in this proceeding to establish that the rates appealed are just and reasonable.
7. The Commission hears this appeal de novo.

- 7A. Under TWC § 13.043(e), the Commission may in an appeal brought under TWC § 13.043(b) consider the information that was available to the governing body of the retail public utility at the time the governing body set the rates appealed; any information that shows, or tends to show, the information that was available to the governing body at the time it set the rates appealed; and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings.
8. The Commission must find that the appealed rates are unreasonably preferential, prejudicial, or discriminatory before setting just and reasonable rates. TWC § 13.043(j); *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994, writ denied).
- 8A. The rates appealed are not just and reasonable and are unreasonably preferential, prejudicial, and discriminatory.
9. Under TWC § 13.043(e), the Commission shall fix the rates that Bear Creek SUD should have fixed at the time it made its decision.
10. Under TWC § 13.043(j), the Commission must use a methodology that preserves the financial integrity of Bear Creek SUD.
11. The rates fixed by this Order will preserve the financial integrity of Bear Creek SUD in compliance with TWC § 13.043(j).
12. The rates fixed by this Order are just and reasonable and are not unreasonable preferential, prejudicial, or discriminatory under TWC § 13.043(j).
13. The rates fixed by this Order are sufficient, equitable, and consistent in application to each class of customers under TWC § 13.043(j).
- 13A. Under TWC § 13.043(e), the rates fixed by this Order are effective as of the original effective date of the rates appealed.
14. The revenue requirement for a retail public utility that uses the cash-basis method includes operation and maintenance expenses, debt service requirements, and capital expenditures that are not debt-financed. *Black v. City of Killeen*, 78 S.W.3d 686, 694 (Tex. App.—Austin 2002, pet. denied).

15. The Commission may allow the recovery of Bear Creek SUD's reasonable expenses incurred in the appeal proceedings under TWC § 13.043(e).
16. The Commission may order Bear Creek SUD to provide refunds and impose surcharges to recover lost revenues under TWC § 13.043(e).
17. Bear Creek SUD may recover the reasonable rate-case expenses it incurred in this proceeding under TWC § 13.043(e).

V. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission adopts the proposal for decision as corrected and clarified, including findings of fact and conclusions of law, except as discussed in this Order.
2. The Commission fixes the following base rates and gallonage charges effective December 18, 2018:

<u>Meter Size</u>	<u>Monthly Base Rate</u>	<u>Gallonage Charge</u>
3/4"	<u>\$30.81</u> (Includes 0 gallons)	<u>\$6.35</u> per 1,000 gallons from 0 to 5,000 gallons
1"	<u>\$51.35</u>	<u>\$7.05</u> per 1,000 gallons from 5,001 to 10,000 gallons
2"	<u>\$164.32</u>	<u>\$8.09</u> per 1,000 gallons from 10,001 to 15,000 gallons
3"	<u>\$308.10</u>	<u>\$10.00</u> per 1,000 gallons from 15,001 to 25,000 gallons
4"	<u>\$513.50</u>	<u>\$11.27</u> per 1,000 gallons from 25,001+ gallons
6"	<u>\$1,027.00</u>	

3. Beginning with the next billing cycle after the date of this Order, Bear Creek SUD must on a monthly basis issue the following refunds and collect the following surcharges over a 14-month period.

<u>Meter Size</u>	<u>Monthly Refund or Surcharge per Customer</u>	<u>Total Refund or Surcharge per Customer</u>
3/4"	<u>(\$4.19)</u>	<u>(\$58.66)</u>
1"	<u>(\$8.65)</u>	<u>(\$121.10)</u>
2"	<u>\$66.32</u>	<u>\$928.48</u>
3"	<u>\$122.10</u>	<u>\$1,709.40</u>

4. The Commission approves a monthly surcharge of \$4.77 per connection to recover Bear Creek SUD's rate-case expenses of \$409,654.58. Beginning with the next billing cycle

after the date of this Order, Bear Creek SUD may collect the monthly surcharge for 36 months or until \$409,654.58 is collected, whichever occurs first.

5. All surcharges and refunds authorized by this Order must be implemented in Docket No. 52558, *Compliance Docket for Docket No. 49351 (Ratepayers' Appeal of the Decision of the Bear Creek Special Utility District to Change Rates)*.
6. The Commission denies all other motions and any other requests for general or specific relief that the Commission has not expressly granted.

Signed at Austin, Texas the _____ day of September 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER