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State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 28, 2023

Shelah Cisneros, Commission Counsel
Commission Advising and Docketing Management
William B. Travis State Office Building
1701 N. Congress, 7th Floor
Austin, Texas 78701

VIA EFILE TEXAS

**RE: SOAH Docket No. 473-23-18885.WS; PUC Docket No. 54565;
*Application of CSWR-Texas Utility Operating Company, LLC for
Authority to Change Rates***

Dear Ms. Cisneros:

Please find attached a Proposal for Decision (PFD) in this case. By copy of this letter, the parties to this proceeding are being served with the PFD.

Please place this case on an open meeting agenda for the Commissioners' consideration. Please notify the Administrative Law Judges and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Enclosure

CC: Service List

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPLICATION OF CSWR-TEXAS UTILITY OPERATING COMPANY, LLC FOR AUTHORITY TO CHANGE RATES

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LIST OF ACRONYMS AND DEFINED TERMS

TERM	DEFINITION
APA	Administrative Procedure Act
ALJs	Administrative Law Judges
Application	CSWR-Texas's Application Class B Water and Sewer Rate Filing Package seeking authority to change rates
ARTNA	Artesian Water
BVBSUD	Buena Vista Bethel Special Utility District
CAPM	Capital Asset Pricing Model
CCN	Certificate of Convenience and Necessity
CoL	Conclusion of Law
Commission	Public Utility Commission of Texas
Company	CSWR-Texas Operating Utility, LLC
CSWR-Texas	CSWR-Texas Operating Utility, LLC
DCF	Discounted Cash Flow
FMV	Fair Market Value
FoF	Finding of Fact
GCD	Groundwater Conservation District
GDP	Gross Domestic Product
GWR	Global Water Resources, Inc
H.B.	House Bill
M/B	Market-to-Book
MERs	Meter Equivalent Ratios
MHI	Median Household Income
Movants	CSWR-Texas, Staff, and OPUC
MSEX	Middlesex Water Company
OPUC	Office of Public Utility Counsel
PFD	Proposal For Decision
RFP	Rate Filing Package
ROE	Return on Equity
RPM	Risk Premium Model
Rule	Texas Administrative Code Section
RWA	Regional Water Authority
SOAH	State Office of Administrative Hearings

TERM	DEFINITION
APA	Administrative Procedure Act
Staff	Staff of the Commission
Staff Proxy Group	Companies that Staff witness Emily Sears determined were of relatively similar risk to CSWR-Texas.
STM	Sale, Transfer, Merger
TAC	Texas Administrative Code
TCEQ	Texas Commission on Environmental Quality
TWC	Texas Water Code
Water Code	Texas Water Code
WSC	Water Supply Corporation
Utility Proxy Group	Companies that CSWR-Texas witness Dylan D'Ascendis determined were of relatively similar risk to CSWR-Texas.
YORW	York Water

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**APPLICATION OF CSWR-TEXAS UTILITY OPERATING
COMPANY, LLC FOR AUTHORITY TO CHANGE RATES**

PROPOSAL FOR DECISION

CSWR-Texas Utility Operating Company, LLC (CSWR-Texas or Company) filed a Class B Water and Sewer Rate Filing Package (Application) with the Public Utility Commission of Texas (Commission) seeking authority to change rates.¹ The Application requests approval to raise rates and consolidate the tariffs of 62 water systems and 12 wastewater systems. For water operations, the Company seeks an annual revenue requirement of approximately \$7.4 million, an increase of

¹ CSWR-Texas Ex. 1 (Application).

\$3.6 million over the systems' current revenues.² For wastewater operations, the Company seeks an annual revenue requirement of approximately \$2.3 million, an increase of \$1.2 million over the systems' current revenues.³

The Office of Public Utility Counsel (OPUC), Commission staff (Staff), and Bob Hill, the designated representative of Quiet Village II, participated in the hearing on the merits and their positions on the Application are summarized as follows: (1) OPUC supports CSWR-Texas's requested consolidation of systems *only if* the new, approved rates are gradually phased in to mitigate rate shock amongst customers and reductions are made to the Company's proposed Return on Equity (ROE);⁴ (2) Staff supports consolidation of only 32 water systems⁵ and only 3 wastewater systems⁶ identified in the Application and recommends various

² A utility's revenue requirement or cost of service comprises the utility's allowable expenses and its return on rate base that it is allowed to recover through rates on an annual basis. *See* 16 Tex. Admin. Code § 24.41(a). The ALJs use the terms cost of service and revenue requirement synonymously throughout the PFD because a utility's revenue requirement should equal its cost of service to make the utility whole.

³ CSWR-Texas Ex. 3 (Cox Direct Testimony (Dir.)) at 20. The ALJs reference the Bates numbered pages throughout the Proposal for Decision (PFD) for the Company's exhibits.

⁴ In its initial brief, OPUC states that it recommends consolidation of all the systems identified in the Application "except for the systems using purchased water who are also subject to pass-through rates." OPUC Initial Brief at 3, 15. However, OPUC does not elaborate or cite to any record evidence as support for this position and does not reiterate or address this position in its reply brief. Instead, in its reply brief, OPUC "recommends the consolidation of *all* the Company's systems should be approved *only* in conjunction with a phased-in rate plan and a reasonable (not enhanced) ROE." OPUC Reply Brief at 18 (emphasis added). Therefore, for purposes of the PFD the ALJs address OPUC's position as stated in its reply brief.

⁵ The 30 water systems that Staff recommends be excluded from consolidation are: Amberwood, Aransas Bay, Emerald Forest, Grande Casa, Ranchitos, Lakeview Ranchettes Estates, Spanish Grant, Red Oak, Chapparal, Copano Cove, Copano Heights, Country Squire Water, Longford Place, El Pinion, La Playa, Timberlane, Vista Verde, Franklin 1, Franklin 3, Fremont, S. Silver Creek, Lake Limestones Cove, RJR (Mountain River), Pelican Isle, Quiet Village II, Goode City, Texas Landing, Deerwood, TCP Water System 2, TCP Water System 3, and TCP Water System 4. Staff Ex. 3 (Eiland Dir.) at 4, 11-12. The ALJs reference the Bates numbered pages for Staff's exhibits.

⁶ The nine wastewater systems that Staff recommends be excluded from consolidation are: Aransas Bay WTP, Bridgewood WWTF, Country Squire, Franklin Water System 1, Longford Place, Shady Grove Addition, Pelican Isle, Texas Landing, and TCP Water System. Staff Ex. 3 (Eiland Dir.) at 4, 12.

adjustments to the Company's requested revenue requirements; and (3) Mr. Hill requests that Quiet Village II be excluded from the Company's requested consolidation and that it not be subject to water or sewer rate increases.⁷

The State Office of Administrative Hearings (SOAH) Administrative Law Judges (ALJs) (hereafter referred to solely as ALJs) recommend consolidating the water and wastewater systems as set forth in the Application and approval of the requested rate increases as modified to reflect various adjustments to the Company's proposed rate of return components, pass-through provisions, rate case expenses, and rate design. All of the ALJs' recommendations are addressed in detail below.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were uncontested and are therefore addressed solely in the findings of fact (FoFs) and conclusions of law (CoLs).

Within the Application, CSWR-Texas proposed a March 10, 2023 effective date for its requested rate change. On March 30, 2023, the Commission ALJ suspended the effective date "through the pendency of this proceeding, or until an interim rate is requested and approved," pursuant to Texas Water Code (Water Code) section 13.1871(g).⁸ Because that section authorizes the Commission to suspend the effective date of the rate change "for not more than 265 days from the proposed effective date," the ALJs construed the Commission ALJ's effective-date

⁷ See Quiet Village Ex. 2. Mr. Hill's admitted exhibits shall be identified as Quiet Village II Exhibits 1 and 2, respectively. Quiet Village Exhibit 1 is redacted as ordered in SOAH Order No. 6 (Aug. 17, 2023).

⁸ PUC Order No. 3 (Mar. 30, 2023).

suspension to mean the earlier of 265 days or until interim rates are approved. Therefore, in SOAH Order No. 1, the ALJs confirmed the Company's November 30, 2023 suspended effective date.⁹

On June 15, 2023, ALJs Meaghan Bailey and Christiaan Siano convened a prehearing conference and aligned the intervenors into groups and required a designated representative be assigned to each aligned group to act as the spokesperson and service contact for each group.¹⁰ The aligned groups were based on the specific water or wastewater system from which the intervenors receive service from CSWR-Texas. In total, 316 intervenors representing approximately 50 individual water or wastewater systems were granted intervention and a designated representative was either assigned by the intervenors or the ALJs for each group.¹¹ Ultimately, all but 16 intervenors were dismissed as parties for failure to participate in the proceeding.¹²

On September 7, 2023, ALJs Meaghan Bailey and Robert Pemberton convened the hearing on the merits and it concluded the same day.¹³ The following

⁹ SOAH Order No. 1 at 3-4 (May 17, 2023).

¹⁰ SOAH Order No. 3 (June 27, 2023); SOAH Order No. 4 at 4-5 (July 12, 2023).

¹¹ PUC Order No. 2 (granted 29 interventions, including OPUC) (Feb. 24, 2023); PUC Order Nos. 4 and 5 (granted 136 interventions) (Apr. 11 and 12, 2023); PUC Order No. 6 (granted 88 interventions) (Apr. 13, 2023); SOAH Order No. 1 (granted 3 interventions) (May 17, 2023); SOAH Order No. 3 (granted 60 interventions) (June 27, 2023); SOAH Order No. 4 (granted 1 intervention) at 3-4 (July 12, 2023).

¹² SOAH Order No. 5 (Aug. 1, 2023). A list of each dismissed intervenor is included as Attachment A to the Order.

¹³ For docket equalization purposes, ALJ Christiaan Siano replaced ALJ Pemberton. ALJ Siano has read the hearing transcripts (the public and confidential portions), the parties' post-hearing briefs, and all relevant prefiled testimony. *See* 16 Tex. Admin. Code § 22.202(e).

parties appeared at the hearing: CSWR-Texas, Staff, OPUC, Mr. Hill,¹⁴ and Dominion Homeowners Association.¹⁵ CSWR-Texas, Staff, OPUC, and Mr. Hill offered exhibits which were admitted.¹⁶ The record closed on September 29, 2023, with the submission of post-hearing reply briefs from the Company, Staff, and OPUC.

II. INTERIM RATES

On September 8, 2023, CSWR-Texas, Staff, and OPUC (collectively, Movants) filed a joint motion to establish interim rates. Movants requested that interim rates be established based at a level that is consistent with the rates recommended by the ALJs in this Proposal for Decision (PFD) effective November 30, 2023 (i.e., the suspended effective date of the proposed rates) or retroactive to that date if the PFD is not issued by that date, subject to any applicable refund or surcharge upon the Commission's final rate determination.¹⁷ The Movants' request was uncontested.

¹⁴ At some point during the hearing Robin Gobler took over for Mr. Hill and participated in the hearing on his behalf. Hearing Transcript (Tr.) at 127.

¹⁵ Ron Moss appeared as counsel for Dominion Homeowners Association, and he is also the ALJ-assigned designated representative for TX-Leon Springs. Mr. Moss did not offer any exhibits into the record. Additionally, David Lagerlof, designated representative for Limestone Cove, also appeared and observed the hearings but had been previously dismissed as a party for failure to file direct testimony or a statement of position on behalf of his aligned group. *See* SOAH Order No. 5 (Aug. 1, 2023).

¹⁶ The aligned groups representing TX-Treetop, Grande Casa, Spanish Grant, Emerald Forest Company, and Settler's Estate filed information that the ALJs deemed to be direct testimony. However, no one appeared at the hearing on behalf of these groups to offer the testimony into the evidentiary record and CSWR-Texas objected to such testimony being admitted without the parties being available for cross-examination. Accordingly, the testimony filed on behalf of these aligned groups is not part of the evidentiary record. Tr. at 30-31.

¹⁷ Joint Motion to Establish Interim Rates and Amend Briefing Schedules (Sept. 8, 2023). Within the joint motion, CSWR-Texas noted that if the requested interim rates were approved it would agree not to begin charging customers the rates proposed in the Application on the suspended effective date of November 30, 2023.

The ALJs granted Movants' request under Water Code section 13.1871(s) and 16 Texas Administrative Code sections (Rules) 22.125 and 24.37.

Accordingly, effective November 30, 2023, the interim rates recommended in the PFD are **APPROVED ON AN INTERIM BASIS**. CSWR-Texas **SHALL**, as soon as practicable, file a copy of all updated tariff pages reflecting the rates recommended in the PFD with the Commission to be stamped as "Approved" by the Commission's Central Records Division.

III. BACKGROUND ON CSWR-TEXAS'S APPLICATION

A. UNCONTESTED FACTS

Company witness Chris Ekrut provided a helpful summary explaining some of the unique uncontested background facts that led to this proceeding.¹⁸ Specifically, since entering the Texas market in December 2020, the Company has acquired numerous water and wastewater systems, and this case represents the Company's first ever rate filing before the Commission. Mr. Ekrut stated that most of the acquired systems represent generally smaller systems in terms of the overall number of customers¹⁹ and have not necessarily been maintained in accordance with regulatory requirements as reflected by the distressed nature of the systems that CSWR-Texas seeks to bring into compliance. He also noted that many of the systems

¹⁸ CSWR-Texas Ex. 8 (Ekrut Dir.) at 6-8.

¹⁹ Mr. Ekrut's System Affordability Analysis shows that many of the systems identified in the Application have fewer than 110 meter connections. CSWR-Texas Ex. 8 (Ekrut Dir.), Exh. CDE-16.

have historically been under-capitalized and that the current rates and tariffs for these systems have, in most cases, not been regularly managed and adjusted, which has resulted in rates that do not reflect the current cost of providing service and that do not provide sufficient funds to make the necessary capital investments to support continuous and adequate service to customers. Additionally, he explained that the books and records of these systems have not been well maintained, and in some cases, historical financial or operational data is not available, or is too inaccurate to be considered reliable.²⁰

Company witness Josiah Cox, President of CSWR-Texas, testified that the Company has acquired many such distressed systems at the behest of the Commission or other state agencies.²¹ Specifically, the Company acquired the following 25 systems that are subject to this proceeding at the request of such agencies: Carroll Water (which includes Grande Casa, Lakeview Ranchettes, Spanish Grant Subdivision, Emerald Forest, and Red Oak), Coletto, Lakeside Estates, Meadowview Estates, Settlers Estates, Settlers Crossing, Settlers Meadows, TX-Treetop, TX-Tri County 3, TX-Tri County 4, Aero Valley, WaterCo, Franklin Water Systems 1, Franklin Water Systems 3, North Victoria, Walnut Bend, Woodlands (Rocket), Abraxas, Big Woods Springs, and Quiet Village II.²²

²⁰ CSWR-Texas Ex. 8 (Ekrut Dir.) at 6-7, 40.

²¹ CSWR-Texas Ex. 11 (Cox Rebuttal Testimony (Reb.)) at 14-16.

²² CSWR-Texas Ex. 11 (Cox Reb.) at 14-16.

B. CSWR-TEXAS'S REQUESTED SYSTEM CONSOLIDATION

CSWR-Texas argues that consolidation of the 62 water systems and 12 wastewater systems identified in the Application is necessary to mitigate the rate increases requested in this proceeding.²³ Mr. Cox opined that without consolidation, “many of these systems will experience significant rate increases based on the actual cost to serve that system on a stand-alone basis.”²⁴ For example, he stated that without consolidation, a household receiving water service from the Walnut Bend system (which has only five customers) that uses 10,000 gallons a month would experience a monthly water bill of approximately \$675, and the 446 customers of Laguna Vista would experience a monthly sewer bill of approximately \$570.²⁵ However, with consolidation, those same Walnut Bend customers would have a monthly bill of approximately \$110 for water service, and the Laguna Vista customers would have a monthly bill of approximately \$70 for sewer service.²⁶ Mr. Cox emphasized that customers of small, distressed community-based systems like Walnut Bend and Laguna Vista should not be required to pay seven or eight times what customers of larger systems pay for essentially the same product and service.²⁷ If the Company’s Application is approved, the 62 consolidated water systems will

²³ CSWR-Texas Ex. 8 (Ekrut Dir.) at 40, Exh. CDE-16 (comparing rate impacts on a consolidated basis compared to a standalone basis).

²⁴ CSWR-Texas Ex. 11 (Cox Reb.) at 25.

²⁵ CSWR-Texas Ex. 11 (Cox Reb.) at 25-26; *see also* CSWR-Texas Ex. 8 (Ekrut Dir.), Exh. CDE-16 (showing Thousand Oaks’s annual charge for 5,000 gallons/month is \$4,109.88 without consolidation instead of \$980.76 with consolidation and Aransas Bay’s annual charge is \$1,356.84 without consolidation compared to \$980.76 with consolidation).

²⁶ CSWR-Texas Ex. 11 (Cox Reb.) at 26.

²⁷ CSWR-Texas Ex. 11 (Cox Reb.) at 27.

have an average monthly residential bill of approximately \$82 for 5,000 gallons and \$110 for 10,000 gallons, and the 12 consolidated sewer systems will have an average monthly residential bill of \$69.²⁸

Mr. Ekrut explained that the affordability of service under a singular function (e.g., water or wastewater service) can be measured by whether the average customer bill exceeds 2% to 2.5% of the Median Household Income (MHI). He noted that, generally, the cost of such service is considered affordable if it does not exceed those MHI percentages.

For purposes of this proceeding, Mr. Ekrut analyzed the impact of a monthly customer bill under a system-level, non-consolidated structure versus the Company's proposed consolidated structure and compared those rates to the MHI at the county level of where the systems are located.²⁹ On a standalone basis, if the Company's requested rate increases are approved, the average customer bill for 5,000 gallons of water or wastewater service would exceed 2.5% of MHI for 13 of the systems subject to this proceeding.³⁰ However, with consolidation, no system subject to this proceeding would experience an increase that exceeds the 2.5% MHI

²⁸ CSWR-Texas Ex. 1 (Application), Exh. C; CSWR-Texas Ex. 11 (Cox Reb.) at 26.

²⁹ CSWR-Texas Ex. 8 (Ekrut Dir.) at 34-35.

³⁰ Those systems are: Aransas Bay, Big Woods Springs, Copano Heights, Council Creek, La Playa, Live Oak Hills, North Victoria, Thousand Oaks, Treetop, Walnut Bend, WaterCo, Woodlands West, and Laguna. CSWR-Texas Ex. 8 (Ekrut Dir.), Exh. CDE-16.

affordability threshold.³¹ If consolidated as proposed, the rates for all but six systems would be below the lower 2% MHI threshold.³²

In addition, the Company asserts that consolidation benefits customers of systems that do not require immediate investment also benefit from consolidation.³³ Mr. Cox explained that, over time, those systems that did not need immediate rehabilitation will age and require new investment and additional rate increases to capture those costs. Mr. Ekrut expounded on this, stating that “over time, as that capital cost gets spread, you are ultimately getting lower cost impacts to all customers.”³⁴ Mr. Ekrut acknowledged that when consolidating systems “there will be times one system is subsidizing another;” however, he testified that “over time, the goal is that those subsidies would work themselves out because they occur at different points in time. The benefit of consolidation comes over time.”³⁵

Finally, the Company argues that consolidation promotes conservation. Mr. Ekrut testified that the proposed water rate design employs a single-tier volumetric charge per 1,000 gallons for all use, which is intended to simplify the rate structures for all customers and more closely tie variable usage charges to variable costs.³⁶ CSWR-Texas argues that “[m]oving from fixed rates—or rates with very

³¹ CSWR-Texas Ex. 8 (Ekrut Dir.) at 34-35, Exh. CDE-16.

³² CSWR-Texas Ex. 8 (Ekrut Dir.), Exh. CDE-16.

³³ CSWR-Texas Ex. 11 (Cox Reb.) at 27-28.

³⁴ Tr. at 94.

³⁵ Tr. at 94-95.

³⁶ CSWR-Texas Ex. 8 (Ekrut Dir.) at 38.

low usage charges—to usage charges that reflect actual variable costs will set a price signal more closely aligned with the customer’s actual usage, thus encouraging conservation.”³⁷ Staff agrees that the Company’s proposed water and wastewater tariffs promote conservation.³⁸

IV. THRESHOLD ISSUES

Staff opposes the Company’s requested consolidation without using the now repealed substantial similarity standard and opposes the Company’s proposed use of annualized system data. As such, the ALJs first address the following threshold issues: (1) whether the recently repealed Water Code section 13.145 (Section 13.145), which set forth the substantial similarity standard for the consolidation of multiple systems, applies to this proceeding (i.e., the substantial similarity issue);³⁹ and (2) whether the test-year requirements set forth in the Commission’s rules require a full, 12 months of historical data (i.e., the annualization issue).⁴⁰

The parties’ positions on the threshold issues are summarized below:

- **CSWR-Texas:** (1) argues the repealed Section 13.145 does not apply to this proceeding;⁴¹ and (2) argues the annualized test-year data for the systems

³⁷ CSWR-Texas Initial Brief at 16.

³⁸ Staff Ex. 4 (Euton Dir.) at 21.

³⁹ As noted below, Section 13.145 requires that two conditions be met for consolidation and the statute is generally referred to as the “substantial similarity standard,” which is named after the first requirement set forth in subsection (a)(1). The PFD uses “Section 13.145” and the “substantial similarity standard” interchangeably.

⁴⁰ 16 Tex. Admin. Code § 24.41.

⁴¹ In the alternative, CSWR-Texas contends its systems should be consolidated even if analyzed under the substantial similarity standard. CSWR-Texas Initial Brief at 12-13.

for which it does not have a full 12 months of historical data is adequate to calculate a revenue requirement for those systems.

- **OPUC:** (1) does not present an explicit position on the applicability of repealed Section 13.145 to this proceeding but supports consolidation of the systems identified in the Application arguing it is in the public interest;⁴² and (2) argues CSWR-Texas's annualized test-year data for certain systems is adequate to calculate a revenue requirement for those systems.⁴³
- **Staff:** (1) argues the repealed Section 13.145 applies to this proceeding; and (2) argues CSWR-Texas's annualized test-year data is inadequate, and a revenue requirement cannot be calculated for the systems that do not have 12 months of historical data.⁴⁴

A. SECTION 13.145 APPLICABILITY

Section 13.145, and thus the substantial similarity standard, was repealed on June 2, 2023.⁴⁵ Staff argues the statute remains applicable because it was in effect at the time the Application was filed.⁴⁶ For this reason, Staff recommends that the three purchased-water systems identified in the Application should not be consolidated with the other groundwater systems because they are not substantially similar.⁴⁷

⁴² OPUC notes that its recommendation is consistent with the Commission's objectives to expedite the acquisition, consolidation, and improvement of distressed water and sewer utilities, including the Commission's recommendation to the Legislature to repeal Section 13.145, as discussed in greater detail below. OPUC Initial Brief at 3; *see* CSWR-Texas Ex. 11 (Cox Reb.) at 290-91, Exh. JC-R-2 (Commission's Self-Evaluation Report submitted on September 1, 2021, to the Texas Sunset Advisory Commission wherein the Commission recommends repeal of Section 13.145 to eliminate the substantial similarity standard).

⁴³ OPUC Initial Brief at 1-8.

⁴⁴ Staff Initial Brief at 5-11.

⁴⁵ Act of May 17, 2023, 88th Leg., R.S., Ch. 327 (H.B. 2373), § 1, eff. June 2, 2023.

⁴⁶ CSWR-Texas Ex. 1 (Application); Staff Initial Brief.

⁴⁷ Staff Initial Brief at 14, 36, 38-39. The three purchased-water systems are Copano Heights, Franklin, and Quiet Village II. Staff Ex. 3 (Eiland Dir.) at 4, 10-15.

CSWR-Texas argues that Section 13.145 does not apply because its repeal was effective immediately. Prior to its repeal, Section 13.145 provided in part:⁴⁸

Sec. 13.145. Multiple Systems Consolidated Under Tariff

- (a) A utility may consolidate more than one system under a single tariff only if:
 - (1) the systems under the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and
 - (2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

In 2021, the Commission, as provided in its Self-Evaluation Report, asked the Texas Legislature to repeal Section 13.145 to:

Eliminate the substantial similarity determination [sic] allow a utility to charge one rate to customers across all its water systems or sewer systems. This would eliminate confusion customers have when determining which part of a tariff applies to them. It would also treat water more like electric rate setting and encourage regionalization and consolidation. In addition, it would eliminate staff processing time required to produce multiple rates for one utility with several systems and would, in turn, eliminate testimony and rate case expenses born by a Class A utility or additional information and potential testimony

⁴⁸ Added by Acts 2001, 77th Leg., ch. 966, § 10.03, eff. Sept. 1, 2001; amended by Acts 2005, 79th Leg., ch. 871, § 2, eff. Sept. 1, 2005.

required by a Class B, C, or D utility seeking a consolidated tariff. (Repeal TWC § 13.145).⁴⁹

Two years later, the Legislature responded to the Commission’s request with the passage of House Bill (H.B.) 2373, which repealed Section 13.145.⁵⁰ H.B. 2373 received the necessary votes for immediate effect and was signed by the Governor on June 2, 2023.⁵¹ The Bill Analysis stated that “H.B. 2373 repeals the substantial similarity requirement found in Section 13.145, Water Code, in order to streamline ratemaking and facilitate regionalization and improvements to investor-owned water systems.”⁵²

1. General Savings Clause

H.B. 2373 did not include a savings clause. Generally, when a statute is repealed without a savings clause limiting the effect of the repeal, the repeal of that statute is given immediate effect.⁵³ Absent a specific savings clause, the effect of a repealed statute may nevertheless be continued by our state’s general savings clause,

⁴⁹ CSWR-Texas Ex. 18 at 237 (Public Utility Commission of Texas Self-Evaluation Report).

⁵⁰ H.B. 2373 provided:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 13.145, Water Code, is repealed.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.

Tex. H.B. 2373, 88th Leg., R.S. (2023).

⁵¹ Act of May 17, 2023, 88th Leg., R.S., Ch. 327 (H.B. 2373), eff. June 2, 2023.

⁵² CSWR-Texas Ex. 13 (Ekrut Reb.), Exh. CDE-R-1 (H.B. 2373 Bill Analysis).

⁵³ *Quick v. City of Austin*, 7 S.W.3d 109, 128 (Tex. 1998).

Texas Government Code section 311.031. Texas courts “will presume that the general savings clause applies unless a contrary legislative intent is shown by clear expression or necessary implication.”⁵⁴ When a statute’s language is clear and unambiguous, courts may not rely on extrinsic aids to construe statutory language.⁵⁵ The ALJs conclude there is no ambiguous language in the repealing legislation. Accordingly, the ALJs did not consider the Commission’s Self-Evaluation Report or the Bill Analysis discussed above, as CSWR-Texas urges. Instead, the ALJs look only to the language of H.B. 2373.

CSWR-Texas argues that by making the repeal effective immediately, the Legislature showed a clear intent that the repeal is to not be subject to the general savings clause. However, the ALJs conclude that simply stating that the repeal is to be effective immediately (instead of September 1) is not a “clear expression or necessary implication” that the general savings clause does not apply. By adopting the general savings clause, the Legislature has expressed “a general legislative policy that the repeal of any statute shall not affect the prior operation of that statute.”⁵⁶ Ultimately, the ALJs find that the immediate effect of the repeal does not overcome the presumption that the general savings clause applies. Thus, the next question is what effect, if any, the general savings clause has on this proceeding.

In relevant part, the general savings clause provides:

⁵⁴ *Quick*, 7 S.W.3d at 130.

⁵⁵ *Tex. Health Presbyterian Hosp. of Denton v. D.A.*, 569 S.W.3d 126, 135-36 (Tex. 2018); *Molinet v. Kimbrell*, 356 S.W.3d 407, 414 (Tex. 2011).

⁵⁶ *Quick*, 7 S.W.3d at 129-30.

- (a) Except as provided by Subsection (b), the reenactment, revision, amendment, or repeal of a statute does not affect:
 - (1) the prior operation of the statute or any prior action taken under it;
 - (2) any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it;
 - (3) any violation of the statute or any penalty, forfeiture, or punishment incurred under the statute before its amendment or repeal; or
 - (4) any investigation, proceeding, or remedy concerning any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.⁵⁷

Staff contends that subsection (a)(1) applies, arguing that the Commission's May 2023 Preliminary Order in this proceeding constitutes prior action taken under Section 13.145.⁵⁸

The ALJs are unpersuaded. First, Staff fails to show how merely processing the Application constitutes "prior action" under Section 13.145. By its own terms, the Commission's Preliminary Order "is preliminary in nature and entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ

⁵⁷ Tex. Gov't Code § 311.031(a).

⁵⁸ Staff Initial Brief at 6-7.

at hearing.”⁵⁹ Second, the ALJs conclude that any “prior operation” of Section 13.145 or “action taken under it” would be the consolidation of multiple systems under a single tariff pursuant to that statute as approved through a Commission order, which has not occurred in this proceeding.⁶⁰ Until a final order is issued and non-appealable, the Commission’s action is not final.⁶¹ Accordingly, the ALJs conclude subsection (a)(1) does not apply here. The ALJs further conclude that no other provision of the general savings clause applies.

2. Prohibition on Retroactive Laws

Generally, Staff argues that failing to apply Section 13.145 to the current proceeding would run afoul of the Texas Constitution’s prohibition against retroactive laws.⁶² The Texas Supreme Court has interpreted this provision to establish a strong presumption against retroactive laws that can only be overcome by a compelling public interest.⁶³ Staff also notes the CCA provides that “[a] statute is presumed to be prospective in its operation unless expressly made retrospective.”⁶⁴ Staff contends that the Commission has followed this same principle to conclude that the standards applicable at the date of filing an application should be applied, albeit

⁵⁹ Preliminary Order at 12 (May 11, 2023).

⁶⁰ No party argues that the repeal of Section 13.145 operates to undo any prior Commission-approved consolidation under Section 13.145 or to invalidate any of the Commission’s substantial similarity findings included in previously issued orders.

⁶¹ See also Tex. Gov’t Code § 2001.144 (when a decision or order is final).

⁶² Tex. Const. art. I, § 16 (“No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.”).

⁶³ *Robinson v. Crown Cork & Seal Co.*, 335 S.W.3d 126, 145 (Tex. 2010); see also *Fire Prot. Serv., Inc. v. Survitec Survival Prods., Inc.*, 649 S.W.3d 197, 201 (Tex. 2022).

⁶⁴ Tex. Gov’t Code § 311.022.

where savings provisions were included.⁶⁵ The Texas Supreme Court recently concluded that “a law is not retroactive in the constitutional sense unless it disrupts or impairs settled expectations.”⁶⁶ Staff argues that the “settled expectation” that Section 13.145 would apply to this proceeding is demonstrated by the Application and witnesses’ testimony that specifically addresses the substantial similarity standard with respect to the systems identified in the Application.⁶⁷

The ALJs are unpersuaded that there is any retroactive application of the repeal at issue. Because the Commission has not taken any final action on the Application, the prohibition against retroactive laws is not implicated. The presumption against retroactive laws “rests on the principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place.”⁶⁸ The ALJs conclude that no conduct will have taken place regarding the Application until the Commission issues a final order. Thus, in this proceeding, the repeal of Section 13.145 would be applied prospectively as it concerns the future consolidation of systems identified in the Application, which will undisputedly occur after the repeal of the statute. In sum, there is no conduct at issue in this proceeding

⁶⁵ See *Southwestern Bell Telephone Company’s Notification to Revise the Cellular Mobile Telephone Interconnection Tariff to Introduce a New Wireless 911 Service Pursuant to P.U.C. Subst. R. 23.25*, Docket No. 20857, Supplemental Preliminary Order at 3-4 (Sept. 23, 1999); see also *Petition of Republic Business Center LLC to Amend Aqua Texas, Inc.’s Certificate of Convenience and Necessity by Expedited Release*, Docket No. 49904, Order on Certified Issue at 1-2 (Jan. 28, 2020); *Petition of Maple Heights Development LLC to Amend Porter Municipal Utility District’s Sewer Certificate of Convenience and Necessity in Montgomery County by Expedited Release*, Docket No. 49924, Order at CoL No. 2 (Mar. 13, 2020).

⁶⁶ *Fire Prot. Serv., Inc.*, 649 S.W.3d at 201.

⁶⁷ CSWR-Texas Ex. 1 (Application) at 19.

⁶⁸ *Fire Prot. Serv., Inc.*, 649 S.W.3d at 201 (internal quotations omitted).

that will not be assessed under the laws in existence at the time the Commission issues its final order regarding the Application.

Additionally, the ALJs are unpersuaded that seeking to consolidate under the law applicable at the time the Application was filed rises to the level of “settled expectations” for constitutional purposes. The Application shows, if anything, that CSWR-Texas expected to consolidate its systems. The repeal of Section 13.145 simply removed the sole qualifying hurdle to realizing that expectation.

3. Prohibition on Agency Action Prior to Effective Legislation

Finally, Staff argues that the Administrative Procedure Act⁶⁹ prohibits a state agency from taking administrative action before legislation takes effect.⁷⁰ By listing Section 13.145 in its Preliminary Order,⁷¹ Staff argues, the Commission properly acted in accordance with this prohibition.⁷² The ALJs are unpersuaded. The issuance of the Preliminary Order on May 11 addressing a then-effective Section 13.145 approximately a month before the statute was repealed has no bearing on the prohibition against an agency taking administrative action prior to legislation taking effect. Second, as noted above, the Preliminary Order is just that—preliminary.⁷³

⁶⁹ Tex. Gov’t Code §§ 2001.001-.903.

⁷⁰ Tex. Gov’t Code § 2001.006(d).

⁷¹ Preliminary Order at 9-10 (May 11, 2023).

⁷² Staff Initial Brief at 6.

⁷³ Preliminary Order at 12 (May 11, 2023).

4. Summary of Parties' Positions

The Company maintains that the repealed Section 13.145 does not apply to this proceeding and thus its requested consolidation is not subject to nor contingent upon the substantial similarity standard. While OPUC does not present a position on the applicability of the repealed Section 13.145, it does stress that consolidation in this instance is in the public interest and that the Company's request to consolidate is consistent with the Commission's objectives to expedite the acquisition, consolidation, and improvement of distressed water and sewer utilities, including the Commission's recommendation to repeal Section 13.145.⁷⁴

In contrast, Staff contends that the substantial similarity standard does apply to the Application, and as a result, recommends that the three purchased-water systems identified in the Application not be consolidated as they are not substantially similar to the remaining groundwater systems.⁷⁵ However, in what appears to be in direct conflict with its position regarding the applicability of the substantial similarity standard, Staff also recommends that the Abraxas, Laguna, and Quiet Village II sewer systems should be consolidated "even if they are not substantially similar" given the extremely high rates that would occur in Laguna without such consolidation.⁷⁶ For that reason, Staff contends it is just and reasonable to

⁷⁴ OPUC Initial Brief at 3; *see* CSWR-Texas Ex. 11 (Cox Reb.) at 290-91, Exh. JC-R-2.

⁷⁵ Staff Initial Brief at 14-15. The three purchased-water systems are Copano Height, Franklin, and Quiet Village. Staff Ex. 3 (Eiland Dir.) at 11.

⁷⁶ Staff Initial Brief at 17, 21, 41-42; Staff Ex. 4 (Euton Dir.) at 21. As Staff witness James Euton testified, without consolidation, Laguna's monthly rate would be approximately \$500 per customer and the system only has seven customer connections. Because that well exceeds the normal range of reasonableness, Mr. Euton noted that Staff has no other choice but to recommend consolidating those three sewer systems.

consolidate those systems without complying with the substantial similarity standard.⁷⁷

5. ALJs' Analysis

Staff's position in this case is inconsistent. Staff argues on the one hand that the substantial similarity standard, repealed at the Commission's behest, continues to apply to the Application and that certain systems should not be consolidated because they are not substantially similar, while arguing that other systems should be consolidated even if they are not substantially similar because they would otherwise experience "extremely high rates."⁷⁸ In short, Staff appears to advocate for consolidation for the value of subsidization while opposing it for the same reason.⁷⁹

Additionally, while Staff argues that it would be just and reasonable to consolidate certain systems that are not substantially similar to prevent extremely high rates, it does not explain how such consolidation would be proper under the substantial similarity standard as the conditions of that standard, if they apply, are mandatory, not discretionary.⁸⁰ Thus, if the repealed standard applies to this proceeding, as Staff argues, Staff failed to prove how its recommendation that

⁷⁷ Staff Initial Brief at 41-42.

⁷⁸ Staff Ex. 4 (Euton Dir.) at 21.

⁷⁹ See CSWR-Texas Ex. 16 (Docket No. 50200, Direct Testimony of Kathryn Eiland) at 28:6-11 (Ms. Eiland testifies that one of the central policy concerns of the substantial similarity standard is "whether a consolidated rate [would] result in some groups of customers subsidizing others.").

⁸⁰ "A utility may consolidate more than one system under a single tariff *only if* . . ." Tex. Water Code § 13.145(a)(emphasis added).

Abraxas, Laguna, and Quiet Village be consolidated would be accomplished in conformance with the statute.

For the reasons discussed above, the ALJs conclude that the substantial similarity standard does not apply to CSWR-Texas's request to consolidate the water and wastewater systems identified in the Application. Therefore, and the ALJs do not analyze the requested consolidation under that standard.

B. ANNUALIZED TEST-YEAR DATA

The second threshold issue concerns the applicability of CSWR-Texas's annualized test-year data for some of the systems it seeks to consolidate. A change in rates must be based on a utility's test year, which the Commission defines as the most recent 12-month period beginning on the first day of a calendar- or fiscal-year quarter for which operating data for a retail public utility are available.⁸¹ When considering a utility's allowable expenses that can be used to calculate rates, only the utility's test-year expenses, as adjusted for known and measurable changes, will be considered.⁸²

1. Background

The Company used a test year ending December 31, 2022, to determine each system's revenue requirements, which informed the ultimate rates requested for the consolidated tariffs. During the test year, CSWR-Texas acquired 36 of the 62

⁸¹ TWC § 13.185(d)(1); 16 Tex. Admin. Code §§ 24.3(36), .41(b).

⁸² 16 Tex. Admin. Code § 24.41(b).

systems identified in the Application, and therefore, it did not have a full 12 months of historical, operational data for those systems.⁸³ To account for the lack of test-year data and reflect a full year's worth of expenses for each system, Mr. Ekrut annualized the several months of data the Company did have for those systems' fixed and variable costs at the time the Application was filed.⁸⁴ Mr. Ekrut summarized the annualization process he performed with regard to the fixed costs for those specific systems as follows:

Relative to these fixed cost components, we looked at those elements and we took the known cost. We either had a contract or a future contract value for these operators. We know what that is by system on a monthly basis, we took that monthly amount multiplied by twelve. We knew what the insurance bill was going to be for the year [sic] we took that amount.⁸⁵

For variable costs, Mr. Ekrut provided an example of the calculations he made for those systems' electric and chemical expenses:

What we've done there is we have used known data where we have it to calculate an effective cost for electricity and chemical expense. We then applied that known cost to the anticipated volumes by the system, the annualized volumes for the system. Those are the same annualized volumes that we used in coming in to annualize revenues. At the same time, we have to make sure that the period is matched.⁸⁶

⁸³ CSWR-Texas Ex. 8 (Ekrut Dir.) at 6, 13-14.

⁸⁴ CSWR-Texas Ex. 8 (Ekrut Dir.) at 8-9, 13-14, 16-18, 29-30.

⁸⁵ Tr. at 88-89.

⁸⁶ Tr. at 89.

In rebuttal, the Company updated its annualized data with an additional six months of actual operating expense data to validate the accuracy of its original test-year annualizations.⁸⁷ The updated data showed that the Company's actual costs were only 1% higher than the annualized amounts included in the Application.⁸⁸

2. Staff's Position

Staff opposes consolidation of the 36 systems that the Company acquired during the test year because it did not have 12 months of historical test-year data for those systems.⁸⁹ Staff argues that the Water Code requires a full, 12 months of historical test-year data to calculate the components of invested capital and net income to arrive at the appropriate cost of service or revenue requirement.⁹⁰ As such, Staff asserts that because it did not have the necessary test-year data for those 36 systems, it could not produce a revenue requirement upon which to recommend a new rate for those systems, whether on a consolidated or standalone basis.⁹¹

Additionally, Staff contends that the Company's annualization adjustments for those systems are not known and measurable changes and therefore cannot be considered.⁹² Specifically, Staff witness Kathryn Eiland testified that Mr. Ekrut's

⁸⁷ CSWR-Texas Ex. 12 (Thies Reb.) at 4-5, Exh. BT-R-1.

⁸⁸ CSWR-Texas Ex. 12 (Thies Reb.) at 5, Exh. BT-R-1; CSWR-Texas Ex. 13 (Ekrut Reb.) at 4-5.

⁸⁹ In total, Staff recommends that 39 of the 62 systems not be consolidated (i.e., the three purchased-water systems Staff argues are not substantially similar and the 27 water and nine sewer systems for which annualized data was used). Staff Initial Brief at 36; Staff Ex. 3 (Eiland Dir.) at 4; Staff Ex. 4 (Euton Dir.) at 11-12, 17-18.

⁹⁰ See 16 Tex. Admin. Code § 24.41(b).

⁹¹ Staff Ex. 3 (Eiland Dir.) at 11; Tr. at 163.

⁹² Staff Initial Brief at 10-11.

annualization adjustments are based on projected, estimated data, whereas a known and measurable change is based on a specific, known amount with a specific timeframe for the change to take effect.⁹³ Ms. Eiland further testified that the Company's annualization adjustments lead to mismatched test-year data, because they combine actual and projected (annualized) data.⁹⁴ No Commission rule or precedent, Staff argues, permits the consideration of projected test-year data, and using such to calculate water and sewer systems' costs of service could result in unreasonable and unnecessary rates.⁹⁵ For these reasons, Staff opines that approval of the Company's annualized data would create a precedent of allowing utilities to file speculative test-year data, making it difficult to determine just and reasonable rates.

3. CSWR-Texas's and OPUC's Positions

OPUC supports the Company's use of annualized test-year data.⁹⁶ Both the Company and OPUC note that Staff's position regarding annualized data in this proceeding is inconsistent with its position in prior dockets. Most notably is Docket No. 50200, wherein Ms. Eiland produced a revenue requirement despite the utility's use of annualized expenses for certain systems.⁹⁷ In that docket, the utility did not perform cost-of-service studies for each water or sewer system for which it sought

⁹³ See Tr. at 170-72.

⁹⁴ Tr. at 172-73.

⁹⁵ See 16 Tex. Admin. Code § 24.41(b) (stating that only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses).

⁹⁶ OPUC Initial Brief at 6-8.

⁹⁷ Tr. at 167-68; see *Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*, Docket No. 50200, Order (Nov. 5, 2020).

consolidated rates.⁹⁸ Instead, as Ms. Eiland testified in that docket, the utility only provided general statements regarding operations and maintenance expenses, depreciation, capital expenditures, and repairs, and the utility performed annualizations for the systems that had less than 12 months of historical test-year data.⁹⁹ Nevertheless, in that docket, Ms. Eiland was able to calculate a revenue requirement and make recommendations on the utility's proposed rates.¹⁰⁰

The Company further challenges Staff's position by noting that annualization of test-year data is standard industry practice and recognized by the Commission's Class A Utility rate application.¹⁰¹ The Company stresses that the annualized data it presented in the Application are based on accurate and predictable fixed and variable costs that only fluctuate marginally during the test year, as explained by Mr. Ekrut above.¹⁰²

Additionally, the Company notes that Commission rules contemplate filing a rate application with less than 12-months of historical operating data.¹⁰³ Specifically,

⁹⁸ Docket No. 50200, Order at FoF Nos. 45,46 (Nov. 5, 2020).

⁹⁹ CSWR-Texas Ex. 16 (Docket No. 50200, Direct Testimony of Kathryn Eiland) at 28; Tr. at 167-68. It was confirmed during the hearing that in the preliminary order for Docket No. 50200, the Commission specifically asked how the rate base and operations and maintenance expenses were determined for each system that was acquired by the utility after the beginning of the applicable test year. Tr. at 165-66.

¹⁰⁰ Tr. at 164-68; CSWR-Texas Ex. 16 (Docket No. 50200, Direct Testimony of Kathryn Eiland) at 7-18.

¹⁰¹ Staff Ex. 12 (Class A Investor-Owned Utility Water and/or Sewer Rate Filing Package for Cost-of-Service Determination) at 9 (defining "Annualization" as an adjustment to bring a utility's accounts to a 12-month level of activity (e.g., year-end number of active connections and revenues, operating expenses, and level of investment)) (emphasis omitted).

¹⁰² Tr. at 88-89.

¹⁰³ 16 Tex. Admin. Code 24.33(b)(2); CSWR-Texas Ex. 13 (Ekrut Reb.) at 6-7.

Rule 24.33(b)(2) states that the effective date of a change in rates may be suspended if the utility “does not have a certificate of convenience or necessity [CCN] or a completed application pending with the commission to obtain or to transfer a [CCN] until a completed application . . . is accepted by the commission.” Mr. Ekrut opined that the language of that rule implies that a “utility could file both an STM [Sale, Transfer, Merger] application and a rate application for a newly acquired system at the very same time, with the effective date of the proposed rates suspended until the STM process is complete.”¹⁰⁴ Mr. Ekrut explained that in this situation, no actual operating data under the new owner would be available at the time the rate application is filed, yet the Commission allows for the submission of the rate application regardless.¹⁰⁵

Finally, CSWR-Texas asserts Staff should have raised its concerns regarding the lack of 12 months of data for the applicable 36 systems before it recommended that the Application was administratively complete.¹⁰⁶

4. ALJs’ Analysis

The Water Code requires the Commission to “base a utility’s expenses on historic test-year information adjusted for known and measurable changes, as

¹⁰⁴ CSWR-Texas Ex. 13 (Ekrut Reb.) at 9-10.

¹⁰⁵ CSWR-Texas Ex. 13 (Ekrut Reb.) at 10.

¹⁰⁶ See Commission Staff’s Recommendation on Administrative Completeness and Notice, Motion to Suspend Proposed Rates, and Joint Proposed Procedural Schedule at 1, Exh. (March 17, 2023 Memorandum of Kathryn Eiland) (Mar. 17, 2023).

determined by utility commission rules.”¹⁰⁷ A test year is only “the most recent 12-month period . . . *for which operating data for a retail public utility are available.*”¹⁰⁸ Additionally, proceeding with an incomplete 12 months of historical data is specifically contemplated by Rule 24.33(b)(2), where the effective date of a proposed rate change may be suspended “until a completed application to obtain or transfer a [CCN] is accepted by the commission,” if a utility does not have pending application “to obtain or transfer a [CCN].” Moreover, it is an exception to the prohibition against filing a rate case more than once in a 12-month period “to adjust the rates of a newly acquired utility system.”¹⁰⁹ Accordingly, the ALJs find that the unavailability of 12 months of historical operating data does not, as a matter of law, preclude further review or operate as a categorical bar to setting rates.

The terms “known and measurable” and “annualization” are defined in the Commission’s Class A Investor-Owned Utilities Water and/or Sewer Rate Filing Package (RFP), but not the Class B RFP or Commission rules.¹¹⁰ Identical definitions for those terms were recently deleted from the Commission’s substantive water rules for the following reasons: “known and measurable” was deleted because one definition may not be “appropriate for every context in which the term could be

¹⁰⁷ TWC § 13.185(d)(1); 16 Tex. Admin. Code § 24.41(b).

¹⁰⁸ TWC § 13.002(22); 16 Tex. Admin. Code § 24.3(36) (emphasis added).

¹⁰⁹ 16 Tex. Admin. Code § 24.29(b)(2).

¹¹⁰ Known and measurable is defined as “[v]erifiable on the record as to amount and certainty of effectuation. Reasonably certain to occur within 12 months of the end of the test year,” and the definition for annualization is provided above. Staff Ex. 12 (Class A Investor-Owned Utility Water and/or Sewer RFP for Cost-of-Service Determination) at 9, 11. The ALJs note that the Class A RFP and process, which was not used in this case, has several notable distinctions from the Class B RFP and process, including the requirement that testimony be filed with the application and shorter processing deadlines.

used;” and “annualization” was deleted because it is a “common ratemaking [term].”¹¹¹

By deleting the definition of “known and measurable” from the substantive water rules, the Commission signaled an intent to broaden the definition to suit the context of each case, which presumably could be broader than the definition set forth in the Class A RFP relied upon by Staff. By contrast, by deleting the definition of annualization, the Commission signaled a recognition that the term is so commonly understood that a definition was unnecessary.

Regarding this proceeding, the ALJs conclude that known and measurable changes are not the narrowly interpreted changes that are “reasonably certain to occur within 12 months of the end of the test year,” as defined in the Class A RFP, but rather broad enough, in this context, to include annualization of available historical operating data, for systems acquired during the test year. This conclusion is supported by Commission practice. In Docket No. 50200, the lack of a full 12 months of historical test-year data was not an impediment to Ms. Eiland producing, and the Commission approving, a revenue requirement for various systems and subsequent consolidation of rates. Additionally, in Docket No. 52828, the Commission approved a revenue requirement for an electric utility that involved annualized operating expenses.¹¹²

¹¹¹ *Rulemaking Project to Amend Chapter 24 to Revise Classifications for Water and Sewer Utilities*, Project No. 49798, Order at 2-3, 5 (Apr. 17, 2020) (adopting Amendments to, *inter alia*, § 24.3).

¹¹² *Application of Golden Spread Electric Cooperative, Inc. to Change Wholesale Transmission Service Rates*, Docket No. 52828, Final Order at FoF Nos. 46, 108 (Mar. 9, 2023) (“Golden Spread’s post-test-year adjustment for transmission operator services expenses is based on known data that is annualized to show the future cost situation with reasonable certainty.”).

Here, CSWR-Texas provided robust support for its annualization: it used actual operational data, which was then spread over 12 months. No party contests this approach. CSWR-Texas then benchmarked the annualized data with an additional six months of actual data. No party challenged the accuracy of the annualized data or the Company's subsequent analysis showing that its annualization was within 1% accuracy of its actual costs. As in Docket No. 52828, CSWR-Texas's post-test-year adjustment for systems acquired during the test year is based on known data that is annualized to show the future cost situation with reasonable certainty. The ALJs therefore conclude that using such data is reasonable here.

C. ALJS' RECOMMENDATIONS ON THE THRESHOLD ISSUES

As noted above, the ALJs concluded the substantial similarity standard does not apply to this proceeding and that the Company's annualized data presented for the 36 systems (27 water systems and 9 sewer systems) it acquired during the test year is reasonable and not an impediment to consolidation or setting a revenue requirement. Therefore, the ALJs reject Staff's recommendation to remove from consolidation (1) the Company's three purchased-water systems on grounds that they are not substantially similar to the remaining groundwater systems, and (2) the 36 systems that the Company did not have 12 months of historical test-year data for at the time it filed the Application.

V. CONSOLIDATION

The ALJs recommend approval of the Company's request to consolidate as set forth in the Application.

Based on the ALJs' findings on the threshold issues above, the question now turns to what standard governs the Company's requested consolidation. In 2001, well before the enactment of Section 13.145, the Commission had "long advocated system-wide rates for utilities in this state."¹¹³ The legislative policy and purpose behind chapter 13 of the Water Code is "to protect the public interest," and to "assure rates, operations, and services that are just and reasonable to the consumers and to the retail public utilities."¹¹⁴ "[R]ates may not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of consumers."¹¹⁵

Company witness Ekrut, whose approach to evaluating substantial similarity was adopted by the Commission in Docket No. 50200,¹¹⁶ testified that failure to consolidate "could be considered inequitable, prejudicial, and discriminatory towards customers of smaller systems, simply because of the relative size or cost structure of their specific water or wastewater system."¹¹⁷ He further opined that consolidation is critical to meeting the legislative policy discussed above.¹¹⁸ No party challenged those assertions.

¹¹³ *Application of Texas-New Mexico Power Company for a Rate Increase*, Docket No. 4240, Examiner's Report at 28 (May 4, 1982); *see also* Docket No. 4240, Order (June 2, 1982) (adopting, in relevant part, the Examiner's Report).

¹¹⁴ Tex. Water Code (TWC) § 13.001(a), (c).

¹¹⁵ TWC § 13.182(b).

¹¹⁶ *Application of Undine Texas Environmental, LLC Authority to Change Rates*, Docket No. 50200, Order (Nov. 5, 2020).

¹¹⁷ CSWR-Texas Ex. 8 (Ekrut Dir.) at 35.

¹¹⁸ CSWR-Texas Ex. 8 (Ekrut Dir.) at 35.

The ALJs conclude that the current standard to be applied to a request to consolidate multiple systems under one tariff is whether the consolidated rate is just and reasonable in accordance with Water Code section 13.182. To be just and reasonable, the consolidated rates may not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of consumers.¹¹⁹

The proposed rates represent an increase to the rates for each system identified in the Application except for three water systems and one sewer system.¹²⁰ Increases to the existing rates for these systems is necessary so the Company can begin to recover the capital expenditures it has invested to bring the systems into compliance with state and federal regulations and so that the rates charged to customers accurately reflect each system's cost of service. If consolidated as requested by the Company, the 62 water systems would have an average monthly residential bill of approximately \$82 for 5,000 gallons and \$110 for 10,000 gallons, and the 12 consolidated sewer systems would have an average monthly residential bill of approximately \$69.¹²¹ These increases represent affordable rates as they do not exceed 2.5% of the MHI for the county in which the systems are located, and the majority of the requested rates are below 2.0% MHI.

¹¹⁹ TWC § 13.182(b).

¹²⁰ CSWR-Texas Ex. 8 (Ekrut Dir.), Exh. CDE-14.

¹²¹ CSWR-Texas Ex. 1 (Application), Exh. C; CSWR-Texas Ex. 11 (Cox Reb.) at 26. These estimates do not account for the ALJs' recommended adjustments to the Company's requested rates as discussed later in the PFD.

The alternative, without consolidation, is that some water customers would have an average monthly residential bill ranging from approximately \$186 to \$674 for 5,000 gallons, while the Laguna sewer customers would have an average monthly residential bill of approximately \$569.¹²² In particular, if the Company's proposed rates are approved but the systems are not consolidated, 12 water systems will have stand-alone rates that exceed 2.5% MHI (ranging from 2.63% MHI to 15.45% MHI) and the Laguna sewer system will have rates that equal 9.00% MHI. The rates for those systems are not affordable and implementation of those rates would not be just and reasonable.

The ALJs conclude that consolidation of the 62 water systems and the 12 wastewater systems identified in the Application is in the public interest and would produce just and reasonable rates for the customers of each consolidated system. Specifically, the resulting rates for each consolidated system are not unreasonably preferential, prejudicial, or discriminatory, and are sufficient, equitable, and consistent in application to each class of consumers.¹²³ Additionally, as the undisputed evidence shows, the Company's requested consolidation aligns with the Commission's objective to expedite the acquisition, consolidation, and improvement of distressed water and sewer utilities and promotes conservation.

The ALJs' recommended adjustments to the Company's requested rates and tariffs are discussed below.

¹²² CSWR-Texas Ex. 8 (Ekirut Dir.), Exh. CDE-16; CSWR-Texas Ex. 11 (Cox Reb.) at 25-26.

¹²³ TWC § 13.182(b).

VI. COST OF SERVICE/REVENUE REQUIREMENT

The two components of a utility's cost of service are its allowable expenses and its return on rate base.¹²⁴ The following equation illustrates a utility's allowable expenses and presents a utility's cost of service:

$$RR = O\&M + D + T + FIT + OE + (RB \times ROR)^{125}$$

CSWR-Texas requests a total water cost of service of \$7,365,181,¹²⁶ and a total sewer cost of service of \$2,263,293.¹²⁷ OPUC does not oppose or recommend adjustments to CSWR-Texas's proposed costs of service.¹²⁸

Initially, Staff recommends adjusting CSWR-Texas's proposed costs of service to exclude from consolidation the 39 systems, as addressed above. Based on ALJs' prior findings and recommendations regarding the applicability of Section 13.145 and the Company's annualized test-year data, the ALJs reject Staff's adjustments based on the exclusion of those systems.

Staff also recommends flow-through adjustments to CSWR-Texas's proposed costs of service due to its recommended changes to the Company's

¹²⁴ 16 Tex. Admin. Code § 24.41(a).

¹²⁵ RR = revenue requirement; O&M = operations & maintenance expense, including administrative and general expenses; D = depreciation; T = assessments and taxes other than income taxes; FIT = federal income taxes; OE = other expenses; RB = rate base; and ROR = overall rate of return. Staff Ex. 3 (Eiland Dir.) at 5.

¹²⁶ CSWR-Texas Ex. 1 (Application) at 357.

¹²⁷ CSWR-Texas Ex. 1 (Application) at 429. CSWR-Texas's total overall requested cost of service totals \$9,628,474.

¹²⁸ See OPUC Initial Brief.

proposed rate base and rate of return.¹²⁹ Ultimately, Staff did not recommend any other direct adjustments to the Company's proposed allowable expenses.¹³⁰

Accordingly, the ALJs find that CSWR-Texas's proposed allowable expenses are reasonable and necessary, and recommend they be approved. Additionally, the Company's proposed affiliate expense is uncontested and the ALJs recommend it also be approved. The Company's proposed rate base and rate of return are discussed below.

VII. RATE BASE

The rate-base components included within the Application include utility plant in service,¹³¹ accumulated depreciation, working capital allowance, prepayments, and contributions in aid of construction.¹³²

A. UNCONTESTED RATE-BASE COMPONENTS

Notwithstanding the acquisition adjustments discussed below, no party challenged the prudence of any specific item included in the Company's requested invested capital or transaction closing costs. Thus, the ALJs conclude that the

¹²⁹ Staff Ex. 3 (Eiland Dir.) at 9-17; Staff Initial Brief at 11-23.

¹³⁰ In accordance with Staff's request, the Company separated the proposed amortization expense from the depreciation expense in rebuttal. Staff Ex. 4 (Euton Dir.) at 8; CSWR-Texas Ex. 12 (Thies Reb.), Exh. BT-R-2 (separation of depreciation and amortization amounts); CSWR-Texas Ex. 9 (Watson Dir.), Exh. DAW-2 (Appendix-A-A-1).

¹³¹ Company witness Brent Thies explained that utility plant in service includes the original cost of acquired systems along with acquisition-related expenses and post-acquisition improvements necessary to provide safe and reliable sewer and water service. CSWR-Texas Ex. 6 (Thies Dir.) at 18.

¹³² CSWR-Texas Ex. 6 (Thies Dir.) at 18-31.

Company's requested invested capital is prudent and that the transaction costs incurred during the acquisition of the systems identified in the Application through the applicable STM proceedings are reasonable.

B. ACQUISITION ADJUSTMENTS FOR UTILITY PLANT IN SERVICE

The utility plant in service included in the Application includes the acquisition asset values for all systems the Company has acquired as of the end of the test year, December 31, 2022.¹³³ CSWR-Texas seeks to recover the following two types of positive acquisition adjustments for utility plant in service: (1) adjustments to rate base previously approved under the fair market value (FMV) statute and rule to calculate the “ratemaking rate base”¹³⁴ of a system, as approved under Water Code § 13.301,¹³⁵ and (2) adjustments to rate base based on the difference between the purchase price and the net book value of a system—for systems that were not acquired through the FMV process.

1. Acquisition Adjustments for Systems Approved Under the FMV Process

Water Code section 13.305(g) explicitly requires that the ratemaking rate base approved in a STM proceeding filed under section 13.301 “shall be incorporated into the rate base of the acquiring utility during the utility’s next rate-base case under

¹³³ CSWR-Texas Ex. 6 (Thies Dir.) at 18.

¹³⁴ Ratemaking rate base means the dollar value of a selling utility that is incorporated into the rate base of the acquiring utility for post-acquisition ratemaking purposes. TWC § 13.305(a)(2); 16 Tex. Admin. Code § 24.238(b)(4).

¹³⁵ TWC § 13.305; 16 Tex. Admin. Code § 24.41(c)(2)(A).

Subchapter F.” CSWR-Texas asserts it acquired the following systems subject to this proceeding through the approved FMV process.¹³⁶

Docket No.	System	Former Owner Name	Approved Ratemaking Rate Base¹³⁷
52879	Lakeview Ranchettes, Red Oak, Spanish Grant Subdivision, Emerald Forest, Grand Casa	Carroll Water	<i>See</i> CSWR Ex. 1A, SOI Ex. F-1 (Highly Sensitive)
52803	Copano Cove Subdivision, Copano Ridge Subdivision	Copano Cove	<i>Id.</i>
52880	Texas Landing Utilities, Texas Landing Deerwood, Texas Landing Goode City	Texas Landing	<i>Id.</i>
53326	Aransas Bay Utilities	Aransas Bay Utilities	<i>Id.</i>
53456	Lake Limestone Coves	Lake Limestone	<i>Id.</i>
53483	Country Squire, Longford Place	North Orange	<i>Id.</i>

CSWR-Texas argues that Staff did not address the FMV-related acquisition adjustments requested for these systems and did not incorporate those positive adjustments within its recommended rate base for the Company.¹³⁸ It further argues that, notwithstanding Staff’s unsuccessful argument that nine of the 14 systems acquired via the FMV process should not be consolidated due to annualized test-year

¹³⁶ CSWR-Texas Initial Brief at 31.

¹³⁷ CSWR-Texas notes that the Notice of Approval (NOA) for these proceedings are included as Staff Exs. 16 (NOA for PUC Docket No. 53326), 17 (NOA for PUC Docket No. 53483), 20 (NOA for PUC Docket No. 53456), 30 (NOA for PUC Docket No. 52879), and 31 (NOA for PUC Docket No. 52880). The specific ratemaking adjustments are included in CSWR-Texas Ex. 6a (Thies Dir.), Exh. BT-3 (Highly Sensitive).

¹³⁸ CSWR-Texas Initial Brief at 30-31; Tr. at 176-79.

data, Staff failed to show why these requested FMV-related acquisition amounts should not be incorporated into its requested rate base under Water Code section 13.305.¹³⁹ Staff did not respond to this argument.¹⁴⁰

The ALJs conclude that, in accordance with Water Code section 13.305, all positive acquisition adjustments for the systems the Company acquired under the FMV process that are subject to this proceeding should be included in its rate base. However, there is some inconsistency in the record regarding which systems were acquired through the FMV process. While CSWR-Texas listed Lake Limestone Cove (Docket No. 53456) in the table above, as provided in its initial brief, that was not one of the six utilities that Company witness Brent Thies testified were acquired through the FMV process.¹⁴¹ Additionally, Mr. Thies testified that the Company acquired Leon Springs (Docket No. 52410) through the FMV process but that system was not included in the Company's table above.¹⁴² Furthermore, there is inconsistency in the systems listed in the table above and the systems identified as being acquired through the FMV process as provided in Mr. Thies's confidential Exhibit BT-3 titled Summary of Acquisition Adjustments for the Period Ending December 31, 2022.¹⁴³ These inconsistencies raise concerns regarding the accuracy the Company's total positive acquisition adjustment for the systems acquired

¹³⁹ CSWR-Texas Initial Brief at 31.

¹⁴⁰ See Staff Initial and Reply Briefs.

¹⁴¹ CSWR-Texas Ex. 6 (Thies Dir.) at 29.

¹⁴² CSWR-Texas Ex. 6 (Thies Dir.) at 29.

¹⁴³ CSWR-Texas Ex. 6a (Thies Dir.), Exh. BT-3 (Highly Sensitive).

through and outside of the FMV process.¹⁴⁴ The ALJs address these inconsistencies in their recommendation below.

2. Acquisition Adjustments for Systems Acquired Outside the FMV Process¹⁴⁵

Pursuant to Rule 24.41, CSWR-Texas also proposed certain positive and negative acquisition adjustments for systems acquired outside the FMV process that result in a total \$602,018 positive adjustment.¹⁴⁶

CSWR-Texas argues that OPUC proposes to disallow recovery of this non-FMV positive acquisition adjustment until CSWR-Texas can prove the benefits of its acquisition of these systems.¹⁴⁷ The Company opposes this position, arguing the adjustments are properly included in its requested rate base because it has met the six conditions for inclusion under Rule 24.41(d)(1)(A)-(F). As noted in the

¹⁴⁴ CSWR-Texas Ex. 6 (Thies Dir.) at 27; CSWR-Texas Ex. 12 (Thies Reb.) at 8; CSWR-Texas Ex. 6a, Exh. BT-3 (Highly Sensitive).

¹⁴⁵ OPUC argues for the first time in its reply brief that CSWR-Texas's requested recovery for the non-FMV system acquisitions should be deferred. As such, OPUC failed to provide the other parties with an opportunity to respond this position. Accordingly, OPUC's arguments on this issue are not further addressed. OPUC Reply Brief at 15-17; *see* Tex. Gov't Code § 2001.051 ("In a contested case, each party is entitled to an opportunity . . . to respond and to present evidence and argument on each issue involved in the case."). However, CSWR-Texas, in its initial brief, generally referenced that "OPUC proposes to disallow recovery of these positive acquisition adjustments until CSWR-Texas can prove the benefits of these systems." CSWR-Texas Initial Brief at 32. Accordingly, the ALJs will address this issue to the extent it was discussed by CSWR-Texas.

¹⁴⁶ 16 Tex. Admin. Code §§ 24.41(d)(1), .239; CSWR-Texas Ex. 12 (Thies Reb.) at 9-11.

¹⁴⁷ CSWR-Texas Initial Brief at 32. The Company did not provide a citation for its assertion of OPUC's position on this issue.

Company's initial brief, the only condition that was contested (Rule 24.41(d)(1)(C)) requires one of the following things to occur as a result of the transaction:¹⁴⁸

- i. the customers of the system being acquired will receive higher quality or more reliable water or sewer service or that the acquisition was necessary so the customers of the acquiring utility's other systems could receive higher quality or more reliable water or sewer service;
- ii. regionalization of retail public utilities, meaning a pooling of financial, managerial, and technical resources that achieve economies of scale or efficiencies of service, was achieved; or
- iii. the acquiring utility will become financially stable and technically sound as a result of the acquisition. . . .

Company witnesses Jacob Freeman and Mr. Cox testified that CSWR-Texas has either made significant physical or operational improvements or is in the process of implementing or planning such improvements at each of the systems identified in the Application.¹⁴⁹ Additionally, the Company asserts that each of the acquisitions will result in regionalization by virtue of the requested consolidation, which is an alternative condition to establishing the customer benefit requirement under subsection (d)(1)(C)(ii).

It is apparent from the Company's planned improvements for each applicable system that, once completed, the customers of those systems will receive either higher quality or more reliable water or sewer service. While the Company is in the process of completing its planned improvements for numerous systems, the rule

¹⁴⁸ 16 Tex. Admin. Code § 24.41(d)(1)(C)(i)-(iii).

¹⁴⁹ CSWR-Texas Ex. 5 (Freeman Dir.), Exh. JF-1 (indicating the planned improvements for each system and the current construction status of those improvements); *see* CSWR-Texas Ex. 3 (Cox Dir.) at 18-20.

does not require that such systems improvements be completed prior to the inclusion of the systems' acquisition adjustments into the rate base, and no party challenged the Company's commitment to completing the identified improvements. Accordingly, the ALJs find that the acquisition for each system identified in the Application meets the condition set forth in subsection (d)(1)(C)(i). Additionally, the ALJs conclude that the Company's acquisition of these systems, notwithstanding any future consolidation, has already resulted in the positive regionalization described in subsection (d)(1)(C)(ii). Therefore, the ALJs find that the Company met its burden to include a positive acquisition adjustment to its rate base under Rule 24.41(d)(1) for the systems it acquired outside of the FMV process.

C. ALJS' RECOMMENDATION

Based on the discussion above, the ALJs conclude the Company's requested rate-base components are prudent and reasonable and should be incorporated into its rate base. Accordingly, the ALJs recommend the Commission approve the Company's requested rate bases for the water and wastewater systems as provided in SOI Exhibit E of the Application.¹⁵⁰

Because no party raised the acquisition adjustment inconsistencies noted above, the total acquisition adjustments CSWR-Texas provided in the Application were used to develop the number-running data. Specifically, the Application shows a positive \$1,249,591 acquisition adjustment for the water systems and a positive

¹⁵⁰ CSWR-Texas Ex. 1 (Application) at 10; CSWR-Texas Ex. 8 (Ekrut Dir.) at 24.

\$545,739 acquisition adjustment for the wastewater systems.¹⁵¹ However, the ALJs recommend that the Company be required to review their applicable acquisition adjustments and provide the Commission with clarifying information regarding which systems were acquired through the FMV process and outside of that process, and a corrected total acquisition adjustment amount that should be included in rate base, if applicable.

VIII. RATE OF RETURN

A. RETURN ON EQUITY

The U.S. Supreme Court has set forth a minimum constitutional standard governing equity returns for utility investors:

From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having comparable risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.¹⁵²

¹⁵¹ CSWR-Texas Ex. 1 (Application) at 384 at row 6, column B, 456 at row 6, column B.

¹⁵² Staff Ex. 1A (Sears Dir.) at 6-7; CSWR-Texas Ex. 10 (D'Ascendis Dir.) at 6-7; *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *see also Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 692-93 (1923) ("A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.").

Thus, a utility must have a reasonable opportunity to earn a return that is: (1) commensurate with returns on equity investments in enterprises having comparable risks; (2) sufficient to ensure the financial soundness of the utility's operations; and (3) adequate to attract capital at reasonable rates, thereby enabling it to provide safe and reliable service. The allowed ROE should enable the utility to finance capital expenditures at reasonable rates and to maintain its financial flexibility during the period in which the rates are expected to remain in effect.

CSWR-Texas and Staff presented experts who testified as to an appropriate ROE for the Company given its current financial situation and current market conditions. Those parties' experts used varying mathematical methodologies to estimate their recommended ROEs, including various discounted cash flow (DCF) models, a risk premium model (RPM), and the capital asset pricing model (CAPM). The experts also addressed the recent economic conditions and how they affect their mathematically derived recommendations.

The parties' application of these varying analytic techniques resulted in the following ROE recommendations:

Summary of Parties' ROE Recommendations¹⁵³

Witness	ROE Range		ROE Adjustment	ROE Recommendation
	Low	High		
Dylan D'Ascendis (CSWR-Texas)	9.16%	12.09%	1.50%	12.15%
Emily Sears (Staff)	7.11%	9.81%	N/A	8.20%

OPUC did not provide independent, mathematically derived analyses of CSWR-Texas's ROE or recommend a specific adjustment to the Company's proposed ROE in its initial brief. However, OPUC did state that the Company's requested ROE is "escalated" and also provided an example of its proposed phased-in rate plan for the Company that is based in part on ROE adjustments proposed by its witness Mark Garrett.¹⁵⁴ Specifically, Mr. Garrett recommended that the Commission adjust the Company's requested rate of return of 9.62%¹⁵⁵ according to the recommendations made by Staff and he explained that he used a proxy ROE of 9% for the revenue requirement calculations provided in his testimony.¹⁵⁶ Accordingly, the ALJs understand OPUC's position on ROE to be in support of Staff's proposed ROE adjustments.¹⁵⁷

¹⁵³ CSWR-Texas Ex. 10 (D'Ascendis Dir.) at 8; Staff Ex. 1A (Sears Dir.) at 20.

¹⁵⁴ OPUC Initial Brief at 12-14. OPUC's proposed phased-in rate plan is discussed later in the PFD.

¹⁵⁵ OPUC Ex. 1 (Garrett Dir.), Exh. MG-2.2, line 3, column K.

¹⁵⁶ OPUC Ex. 1 (Garrett Dir.) at 6-7. The proxy 9% ROE used by Mr. Garrett represents the ROE agreed to in a recently settled water rate case. *See Application of Monarch Utilities I, L.P., for Authority to Change Rates*, Docket No. 50944 (Feb. 23, 2022) (Monarch).

¹⁵⁷ The statements OPUC made in its initial brief regarding ROE are not further addressed.

1. Summary of Parties' ROE Proposals

Company witness Dylan D'Ascendis testified that his recommended ROE of 12.15% is based on the market-based, common-equity cost rates of companies he determined were of relatively similar risk to CSWR-Texas (the Utility Proxy Group) and an analysis of that group's market data as applied to his DCF model, RPM, and CAPM.¹⁵⁸ Based on that analysis, he opined the indicated range of common equity cost rates applicable to the Utility Proxy Group is between 10.13% and 11.13%.¹⁵⁹ He then adjusted the indicated range upward by 1.50% to reflect what he argued is CSWR-Texas's greater business risk due to its substantially smaller size and higher business risk relative to the Utility Proxy Group.¹⁶⁰ Mr. D'Ascendis's model results and ROE recommendation are summarized below:

Discounted Cash Flow Model	9.16%
Risk Premium Model	12.09%
Capital Asset Pricing Model	11.58%
Market Models Applied to Comparable Risk, Non-Price Regulated Companies	11.40%
Indicated Range of Common Equity Cost Rates Before Adjustments for Company-Specific Risk	10.13% - 11.13%
Business Risk Adjustment	1.50%

¹⁵⁸ CSWR-Texas Ex. 10 (D'Ascendis Dir.) at 6-8. Mr. D'Ascendis also applied those models to a proxy group of domestic, non-price-regulated companies that he determined were comparable in total risk to the Utility Proxy Group. However, he asserted that to remain conservative he did not consider the ROE model results from that non-price-regulated group when determining the recommended ROE range identified above. As such, the model results of the non-price-regulated group will not be discussed or considered in the PFD.

¹⁵⁹ CSWR-Texas Ex. 10 (D'Ascendis Dir.) at 8 n.3. Mr. D'Ascendis noted that his indicated range is equal to 50 basis points above and below the midpoint of his three model results.

¹⁶⁰ CSWR-Texas Ex. 10 (D'Ascendis Dir.) at 8.

Indicated Range of Common Equity Cost Rates after Adjustment	<u>11.63% – 12.63%</u>
Recommended Cost of Common Equity	<u>12.15%</u>

Similarly, Staff witness Emily Sears recommended an ROE of 8.20% based on an analysis of her proxy group of utilities (Staff Proxy Group) and an analysis of that group’s market data as applied to two separate DCF models and her RPM analysis.¹⁶¹ The results of Ms. Sears’s analyses are provided below:¹⁶²

Methodology	Point Estimate	Range
Single-stage DCF Analysis	7.59%	5.49% - 9.12%
Multi-stage DCF Analysis	7.11%	6.39% - 8.19%
Conventional Risk Premium	9.81%	N/A
Unadjusted ROE Estimate	8.20%	7.11% - 9.81%

2. Proxy Groups

Because the Company is not publicly traded and does not have publicly traded equity securities, it is necessary to develop groups of publicly traded, comparable companies to serve as “proxies” for the Company. This use of proxy companies is consistent with the *Hope* and *Bluefield* comparable risk standards referenced above.

¹⁶¹ Staff Ex. 1A (Sears Dir.) at 8-9.

¹⁶² Staff Ex. 1A (Sears Dir.) at 20.

In developing their proxy groups, Mr. D'Ascendis and Ms. Sears applied various screening criteria to identify companies that they determined are appropriately comparable to the Company. The Utility Proxy Group consisted of the following six companies: American States Water Company, American Water Works Company, Inc., California Water Services Group, Essential Utilities Inc., Middlesex Water Company (MSEX), and SJW Group.¹⁶³ The Staff Proxy Group also consisted of those six companies as well as Artesian Water (ARTNA) and York Water (YORW).¹⁶⁴

a) Parties' Arguments

Mr. D'Ascendis criticized Ms. Sears's inclusion of ARTNA and YORW in her proxy group, asserting she misapplied her screening criteria.¹⁶⁵ In particular, he noted that both ARTNA and YORW fail to meet her criteria that the company have a positive (greater than 0%) long-term projected earnings growth rate from *Value Line*. For this reason, Mr. D'Ascendis argued those companies should be eliminated from the Staff Proxy Group.¹⁶⁶ Additionally, Mr. D'Ascendis opined that Global Water Resources, Inc. (GWR) was erroneously excluded from the Staff Proxy Group despite meeting all of Ms. Sears's screening criteria.¹⁶⁷

¹⁶³ CSWR-Texas 10 (D'Ascendis Dir.) at 18-19.

¹⁶⁴ Staff Ex. 1A (Sears Dir.) at 10-11.

¹⁶⁵ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 4.

¹⁶⁶ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 9; Staff Ex. 1A (Sears Dir.) at 10-11.

¹⁶⁷ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 9; Staff Ex. 1A (Sears Dir.) at 10-11.

In response, Staff notes that the *Value Line* projected earnings growth rates for both ARTNA and YORW state that “consensus 5-year earnings growth [is] not available,” which it argues belies Mr. D’Ascendis’s contention that they do not meet the criteria requiring a positive long-term projected earnings growth rate.¹⁶⁸ Staff also notes that GWR was not included as a proxy because it only operates principally in two metropolitan cities in Arizona unlike the companies in the Staff Proxy Group and CSWR-Texas, which operate across rural and urban communities and/or across multiple states.¹⁶⁹ Staff further stresses that despite Mr. D’Ascendis’s criticism regarding the exclusion of GWR, he did not include that company in the Utility Proxy Group.¹⁷⁰

Staff did not challenge Mr. D’Ascendis’s selection criteria, or the companies included in the Utility Proxy Group.¹⁷¹

b) ALJs’ Analysis

Staff did not provide argument or evidence to support its assertion that the *Value Line* statement noting “consensus 5-year earnings growth not available” for ARTNA and YORW proves that those systems do in fact have a positive long-term projected earnings growth rate. Ms. Sears’s selection criteria were not discretionary; therefore, by failing to meet that criterion, ARTNA and YORW should not have

¹⁶⁸ Staff Ex. 1B (Sears Confidential Workpaper) at 5, 10; CSWR-Texas Ex. 14 (D’Ascendis Reb.), Exh. Workpaper 19 at 3, 9.

¹⁶⁹ Staff Initial Brief at 27; CSWR-Texas Ex. 14 (D’Ascendis Reb.), Exh. Workpaper 19 at 6.

¹⁷⁰ Staff Initial Brief at 27.

¹⁷¹ See generally Staff Initial Brief.

been included in the Staff Proxy Group. Additionally, Ms. Sears's criteria did not differentiate or exclude companies based on the communities they serve or where they operate. Thus, the ALJs conclude that GWR should have been included in the Staff Proxy Group as it met all of Ms. Sears's selection criteria. Conversely, Mr. D'Ascendis's selection criteria differed from Ms. Sears's and Staff did not argue or prove that Mr. D'Ascendis should have included GWR in the Utility Proxy Group.

In sum, the ALJs agree that, under Ms. Sears's screening criteria, ARTNA and YORW were erroneously included in the Staff Proxy Group and that GWR was erroneously excluded.

3. Methodologies

a) DCF Model

The DCF model is based on the theory that the present value of an expected future stream of net cash flows during the investment holding period can be determined by discounting those cash flows at the cost of capital, or the investors' capitalization rate.¹⁷² In short, the theory underlying the model holds that the price of a share is equal to the present value of all future dividends.¹⁷³

¹⁷² CSWR-Texas Ex. 10 (D'Ascendis Dir.) at 23-24.

¹⁷³ Staff Ex. 1A (Sears Dir.) at 11.

The DCF model can be performed as either a single-stage constant-growth version or a multi-stage version. Ms. Sears noted that the constant-growth model recognizes that the return to the stockholder consists of two parts: dividend yield and growth, and that under this model the dividends are assumed to grow at a constant rate and are based on analysts' estimates of the utility's earnings growth over the next five years.¹⁷⁴ For the multi-stage model, she noted it is often employed when there is an expectation of different growth rates over different periods of time.¹⁷⁵ Her multi-stage model used a three-stage growth approach: the first stage is similar to the five years used in the single-stage constant-growth DCF model; the second stage covers years six through 10 and is based on the projected long-term growth in Gross Domestic Product (GDP), which, as applicable to this case, is 5.11%;¹⁷⁶ and the third and final stage covers years 11 through 150 and is also based on the 5.11% long-term GDP growth estimate.¹⁷⁷

As an initial matter, Mr. D'Ascendis used Ms. Sears's own DCF models to determine what impact excluding ARTNA and YORW from the Staff Proxy Group and including GWR would have on her results. The results of those modified models raised Ms. Sears's average single-stage DCF result to 9.34% and her multi-stage DCF

¹⁷⁴ Staff Ex. 1A (Sears Dir.) at 14.

¹⁷⁵ Staff Ex. 1A (Sears Dir.) at 11-13.

¹⁷⁶ The 5.11% expected long-run nominal growth rate consists of the 3.11% per year average real growth-rate of GDP for the period of 1951 through 2022, as calculated from data reported by the U.S. Bureau of Economic Analysis, and the 2.00% rate of inflation forecast by the Board of Governors of the Federal Reserve in its most recent estimate. Staff Ex. 1A (Sears Dir.) at 15 n.7-8.

¹⁷⁷ Staff Ex. 1A (Sears Dir.) at 14.

result to 7.60%.¹⁷⁸ Based on the findings addressed above, the ALJs conclude that when analyzing Ms. Sears's DCF results, those modified results should be considered as they represent a more accurate reflection of the companies that should have been included in the Staff Proxy Group. Thus, Ms. Sears's DCF results, as modified by Mr. D'Ascendis, are provided below:

Methodology	Point Estimate	Range
Single-stage DCF Analysis, as modified	9.34%	5.49% - 17.80%
Multi-stage DCF Analysis, as modified	7.60%	6.89% - 9.84%

(i) Single-Stage DCF Model

Mr. D'Ascendis generally agreed with Ms. Sears's single-stage DCF model application except for her inclusion of MSEX's results which he opined was improper as it represents an outlier in Texas. In his opinion, MSEX's DCF result of 5.49% ROE should not be considered because it is indistinguishable from the current 5.41% marginal yield on A-rated utility debt and is at least 2.99 basis points below any ROE approved by this Commission for a water utility.¹⁷⁹ He explained his reasoning in part by noting that:

It is generally accepted that common equity capital has greater investment risk than debt capital, as common equity shareholders sit behind debt holders in any claim on a company's assets and earnings. Because of this, any investor required return on equity at or below the

¹⁷⁸ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 8, Schedule DWD-R-2.

¹⁷⁹ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 21-22.

marginal yield on long-term debt related to that particular stock is non-sensical and should not be considered.¹⁸⁰

CSWR-Texas stresses this position, arguing it is absurd to think that investors would accept an ROE that is no higher than the utility's own cost of debt. Thus, CSWR-Texas argued that including MSEX in Ms. Sears's DCF analysis artificially skewed her results downward below a reasonable return.¹⁸¹

Staff responds that Mr. D'Ascendis's critique of the inclusion of MSEX in the Staff Proxy Group is not based on any flawed calculation or model input, but simply because he dislikes the result. Staff maintains that Ms. Sears properly included MSEX in her proxy group and that the results of her single-stage DCF methodology are reasonable given the current market conditions.¹⁸²

Staff did not challenge Mr. D'Ascendis's DCF model application or results.¹⁸³

The ALJs conclude the following clarification is necessary: MSEX is included in both the Utility Proxy Group and the Staff Proxy Group. Mr. D'Ascendis's criticism is not that Ms. Sears should have excluded MSEX from her proxy group, but that she should have not have considered MSEX's resulting 5.49% single-stage

¹⁸⁰ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 19.

¹⁸¹ CSWR-Texas Initial Brief at 25.

¹⁸² Staff Initial Brief at 27; Staff Reply Brief at 14.

¹⁸³ See Staff Initial Brief. In its reply brief, Staff noted that while Ms. Sears did not challenge Mr. D'Ascendis's ROE models or his application of those models, Staff does not support or agree with them. Staff Reply Brief at 12-13.

DCF result when calculating the overall average of the Staff Proxy Group's single-stage DCF result.¹⁸⁴ However, the ALJs note that in Mr. D'Ascendis's DCF model, MSEX's indicated ROE result was only slightly higher than Ms. Sears's at 5.81%, and that he also incorporated that result in his calculation of the overall average of the Utility Proxy Group's DCF result.¹⁸⁵

Thus, while the ALJs agree that the inclusion of an ROE that is on par with the cost of debt defies basic financial principles that investors would require greater return for bearing more risk, it appears that is the current situation for MSEX and its investors based on Mr. D'Ascendis's and Ms. Sears's comparable results. Coupled with the fact that Mr. D'Ascendis considered MSEX's indicated ROE in his calculations and recommendations in this case, the ALJs find that Ms. Sears did not act improperly by doing so as well.

¹⁸⁴ Staff Ex. 1a (Sears Dir.), Exh. ES-7. The ALJs confirm that in Mr. D'Ascendis's replication of Ms. Sears's DCF models to determine the impact of excluding ARTNA and YORW from the Staff Proxy Group and including GWR, he included MSEX's results when determining the average overall Staff Proxy Group result for both models.

¹⁸⁵ CSWR-Texas Ex. 10 (D'Ascendis Dir.), Exh. DWD-3 at 1. Note, the 9.16% figure provided as the DCF result in the table above summarizing Mr. D'Ascendis's ROE model results is not the 9.11% average of his results but rather the average of the mean and median of his results.

(ii) Multi-Stage DCF Model

(a) CSWR-Texas's Arguments

Mr. D'Ascendis first challenged Ms. Sears's choice to use a multi-stage DCF model in this proceeding and argued the results of that model are unreliable as to the Company's specific growth.¹⁸⁶ Specifically, he testified that:

[t]he economics of the public utility business indicate that the industry is in the steady-state, or constant-growth stage of a multi-stage DCF, which would mean that the three- to five-year projected growth rates for each company would be the "steady-state" or terminal growth rate appropriate for the DCF model for utility companies, not the GDP growth rate, which is not a company-specific growth rate, nor is it an upward bound for growth.¹⁸⁷

Based on his testimony, the Company argues that financial theory supports treating public utilities as mature companies with a single steady growth and therefore Mr. D'Ascendis's single-stage constant growth DCF model produced more reliable results than Ms. Sears's multi-stage DCF model.¹⁸⁸ In short, the Company argues that economic theory holds that the U.S. GDP growth rate is not an accurate barometer of a utility's growth rate.¹⁸⁹

¹⁸⁶ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 21.

¹⁸⁷ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 23-25.

¹⁸⁸ CSWR-Texas Initial Brief at 26. The finance text that Mr. D'Ascendis relies on to support this position, *Investments*, specifically addressed electric utilities, not water or wastewater utilities. CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 15.

¹⁸⁹ CSWR-Texas Reply Brief at 21.

Ultimately, the Company contends that by averaging the results from her two DCF models with her RPM result, Ms. Sears improperly placed two-thirds weight on her DCF results which unreasonably skewed her recommended ROE range downward. Mr. D'Ascendis testified that, while the DCF model is useful, Ms. Sears's overreliance on her DCF results is problematic, in part, because "DCF models assume a market-to-book (M/B) ratio of 1.0 and therefore under- or overstates investors' required return when market value exceeds or is less than book value, respectively."¹⁹⁰ As such, he opined that the market-based DCF will produce the total annual dollar return expected by investors only when market and book values of common equity are equal, which he asserted is a very rare and unlikely situation.¹⁹¹ The Company argues that Ms. Sears's ultimate ROE recommendation would have been considerably higher and more reflective of the Company's business risk had she used only one DCF model or included a CAPM analysis to offset the use of her two DCF models.¹⁹²

Mr. D'Ascendis also challenged some of the inputs Ms. Sears used for her multi-stage DCF model, including the use of historical GDP growth for the period of 1951 to 2022 and the projected measure of inflation. First, Mr. D'Ascendis stated that Ms. Sears's model should have included data from an additional four years, 1947-1950, and that the inclusion of that data would result in her U.S. GDP growth rate estimate rising from 3.11% to 3.20%.¹⁹³ Staff agrees that Ms. Sears should have

¹⁹⁰ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 10-11.

¹⁹¹ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 10-11.

¹⁹² CSWR-Texas Initial Brief at 26.

¹⁹³ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 25-26.

included data from those additional four years in her model.¹⁹⁴ The Company argues the omission of that data ultimately lowered Ms. Sears's ROE results.¹⁹⁵ Second, Mr. D'Ascendis challenged her use of the Federal Reserve's 2.0% target inflation rate, arguing that a more objective estimate should have been used, such as the 2.24% implied 30-year Treasury Inflation-Protected Securities spread estimate or the 2.20% average of projected Consumer Price Index for the years 2025-2029 and 2030-2034 estimate from *Blue Chip Financial Forecasts*.¹⁹⁶

(b) Staff's Arguments

Staff maintains that there is no single infallible approach to estimating a utility's ROE, which is why variations in the chosen approaches, even in the application of the same approach by different analysts, is not only commonplace but expected.¹⁹⁷ Staff supports Ms. Sears's choice to give more weight to her DCF models over her RPM approach because the DCF models are well-established and have been relied upon in rate-case decisions at the Commission for at least the last three decades.¹⁹⁸ In particular, Staff asserts that if utilities are in a constant-growth stage of a multi-stage DCF, as Mr. D'Ascendis asserts, they would outpace the general U.S. growth rate of approximately 3.11%, which Staff contends is unrealistic. Staff acknowledges that while that is the assumption underlying the single-stage

¹⁹⁴ Staff Initial Brief at 31.

¹⁹⁵ CSWR-Texas Reply Brief at 21.

¹⁹⁶ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 25-26.

¹⁹⁷ Staff Ex. 1A (Sears Dir.) at 8. Mr. D'Ascendis agreed that there is no single infallible approach to estimate the ROE in all circumstances. CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 18.

¹⁹⁸ Staff Ex. 1A (Sears Dir.) at 9; Staff Initial Brief at 30; Staff Reply Brief at 13.

DCF model, it would result in an absurd outcome and therefore it is reasonable to blend the single- and multi-stage DCF models rather than focusing solely on a single-stage model like Mr. D'Ascendis.¹⁹⁹

With respect to Mr. D'Ascendis's specific input criticisms, Staff first argues that Ms. Sears's omission of data from years 1947-1950 would result in only a nominal change that would have "very little effect" on her produced result.²⁰⁰ Second, Staff argues that no evidence was provided to explain why Mr. D'Ascendis's alternative inflation rate estimates are either more objective or more accurate than the Federal Reserve's target rate. Instead, Staff argues that since the Federal Reserve is the principal entity that maintains and affects inflation, its target rate is the most accurate estimate to rely upon.²⁰¹

(c) ALJs' Analysis

The ALJs conclude that by averaging her single-stage and multi-stage DCF results with her RPM result to determine the Company's ROE, Ms. Sears placed too much weight on her DCF results, which unreasonably skewed her recommendation downward. It is also uncontested that one input in Ms. Sears's multi-stage DCF model is inaccurate, the effect of which produced a lower result, even if only to a minimal extent.²⁰² Additionally, Staff did not sufficiently explain why a multi-stage

¹⁹⁹ Staff Initial Brief at 31.

²⁰⁰ Staff Initial Brief at 31.

²⁰¹ Staff Initial Brief at 31.

²⁰² Staff Initial Brief at 31.

DCF was appropriately applied in this proceeding given Mr. D'Ascendis's criticisms. Therefore, the ALJs conclude that Ms. Sears's multi-stage DCF results should not bear any weight in this proceeding. Accordingly, the ALJs conclude that Ms. Sears's multi-stage DCF analysis should be disregarded as unreliable.

b) RPM

Mr. D'Ascendis criticized Ms. Sears's use of current interest rates, as opposed to projected interest rates, and her use of annual authorized returns in favor of individual authorized returns in her RPM approach. Specifically, he challenged her use of current interest rates, despite her recognition that a cost of capital analysis and general ratemaking are forward-looking concepts and that projected growth rates should be used.²⁰³ For example, Ms. Sears used analyst-projected growth rates rather than historical data as a proxy for investor expectations of growth in her DCF model for that exact reason, but did not apply that same logic to selecting an appropriate interest rate in her RPM approach.²⁰⁴

Further, Mr. D'Ascendis argued that her use of annual authorized returns, rather than individual cases, is susceptible to misleading fluctuations. He reasoned that such averaging is improper because some years have more rate case decisions than others, and when they are averaged together, the years with less rate cases will garner unnecessary weight.²⁰⁵ Additionally, he opined that reviewing

²⁰³ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 26-27.

²⁰⁴ Staff Ex. 1A (Sears Dir.) at 16; CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 27-29.

²⁰⁵ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 29.

Commission-approved ROEs on an individual case basis, instead of using an annual average, is more accurate because interest rates and market conditions change during a calendar year, so if the annual average of authorized returns and interest rates is used, the fluctuation between the interest rates and equity risk premiums during the year is unaccounted for.²⁰⁶ Mr. D'Ascendis testified that if Ms. Sears's RPM inputs were modified to reflect a prospective Moody's BAA-rated public utility bond yield and individual rate case data instead of average annual data, her RPM result would rise to 9.90% from 9.81%.²⁰⁷

Staff did not respond to the criticisms regarding Ms. Sears's RPM approach and did not challenge Mr. D'Ascendis's RPM application or his 12.09% RPM result.²⁰⁸

The ALJs are persuaded that the proposed changes to Mr. Sears's RPM inputs, as identified by Mr. D'Ascendis, have merit. Once Ms. Sears's RPM approach is modified to reflect those changed inputs it produces a modified result of 9.90%, representing a slight 0.09% increase from Ms. Sears's result. Because Mr. D'Ascendis presented only the two criticisms referenced above against Ms. Sears's RPM application, the ALJs conclude it stands to reason that once modified, Ms. Sears's 9.90% RPM result is reasonable.

²⁰⁶ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 29.

²⁰⁷ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 29-31, Exh. Schedule DWD-R-7 and Chart 2.

²⁰⁸ See Staff Initial Brief; Mr. D'Ascendis's RPM result is derived from averaging the results of his two RPM analyses (the predictive risk premium model (12.64%) and the adjusted market approach results (11.53%)). CSWR-Texas Ex. 10 (D'Ascendis Dir.) at 27-40.

It is uncontested that expert opinions can differ on many factors relevant to an ROE recommendation such as basic assumptions about risk, economic conditions, and investor expectations, and that variations in such experts' chosen approaches, and even the application of the same approach or methodology, are commonplace. However, as Ms. Sears explained, despite this expected variation between experts' results, the results of various methods should generally be close to each other or their estimates should have overlapping ranges.²⁰⁹ Consequently, it is a reasonable presumption that an expert's own results from various methods should generally be close to each other as well. This conclusion is supported by Mr. D'Ascendis's concern regarding the 2.46 basis points difference between Ms. Sears's average DCF result and her RPM result.²¹⁰

In this instance, Ms. Sears's modified single-stage DCF and RPM results of 9.34% and 9.90%, respectively, are generally close together and align with Mr. D'Ascendis's 9.16% DCF result. Conversely, Mr. D'Ascendis's 12.09% RPM is not generally close to those results. While Staff did not present any criticisms against Mr. D'Ascendis's RPM approach, the ALJs are left questioning why there is such a large divide between his RPM result and the other results discussed above. Additionally, the ALJs question why Mr. D'Ascendis's RPM result is so much higher than prior Commission-approved ROEs for water utilities.²¹¹ Specifically, the

²⁰⁹ Staff Ex. 1A (Sears Dir.) at 8.

²¹⁰ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 18 (“[t]he concern I have with Ms. Sears’s analysis is that her two model results are far apart (DCF average: 7.35%, RPM result: 9.81%)....”).

²¹¹ See Staff Ex. 5. The ALJs acknowledge that market conditions have changed since these cases were decided, but that alone cannot explain the significant gap between the Commission-ordered ROEs and Mr. D'Ascendis's RPM result.

ROEs approved in Docket Nos. 50944, 46747, 45720, and 45720 were 9.0%, 9.07%, 8.79%, and 8.48%, respectively.²¹²

The Company bears the burden to prove its requested ROE is reasonable, and for the reasons addressed above, the ALJs find that it did not sufficiently demonstrate that Mr. D'Ascendis's 12.09% RPM result, representing a 2.93 basis points difference from his DCF result, is reasonable and should be used to calculate the Company's ROE.

c) CAPM

(i) CSWR-Texas's Arguments

Mr. D'Ascendis's CAPM analysis produced an ROE of 11.58%. Ms. Sears did not perform a CAPM analysis. Mr. D'Ascendis argued that by not conducting a CAPM analysis, Ms. Sears failed to test the reasonableness of her ROE analyses. As noted above, Mr. D'Ascendis is concerned with how far apart her average DCF result and RPM result were from each other. He stressed that this concern is increased when, as noted above, the DCF result is shown to understate the investor-

²¹² *Application of Monarch Utilities I L.P. for Authority to Change Rates*, Docket No. 50944, Order at FoF Nos. 84-85 (Feb. 23, 2022); *Application of Cypress Gardens Mobile Home Subdivision for Authority to Change Rates*, Docket No. 46747, Order at FoF Nos. 17-18 (Sept. 15, 2019); *Application of Double Diamond Utility Company, Inc. for a Rate/Tariff Change*, Docket No. 46245, Order at FoF No. 126 (Dec. 12, 2019); *Application of Rio Concho Aviation, Inc. for a Rate/Tariff Change*, Docket No. 45720, Order at FoF No. 41 (June 29, 2017). While Docket No. 50944 resulted in settlement and is therefore not precedential, it is useful as a comparison to the ALJs' recommended ROE in this proceeding. The ALJs reference only the recent water rate cases in which the Commission-approved ROE was explicitly stated in the final order. Nevertheless, the Commission has recently approved rates for other water utilities based on settlement in which the approved overall rate of return is lower than what the ALJs recommend in this proceeding. Thus, for those cases, the ALJs conclude it is a reasonable presumption that the approved ROEs are also lower than Mr. D'Ascendis's RPM result and his ultimate ROE recommendation. While those cases are not precedential, they are useful as comparisons to the ALJs' recommended ROE in this proceeding. *See* Staff Ex. 5 (Docket Nos. 50557, 50200, 49887, 49337, and 48819).

required return when M/B ratios are over 1.0 times.²¹³ To support his position that Ms. Sears should have performed a third model analysis, Mr. D'Ascendis reasoned that, "like all cost of common equity models, the DCF has its limitations and that the use of multiple cost of common equity models in conjunction with informed expert judgement provides a more accurate and reliable picture of the investor-required ROE than does a narrow evaluation of the results of one model."²¹⁴

Mr. D'Ascendis also cited to financial literature supporting the use of multiple cost-of-common-equity models in determining a utility's investor-required return which provide in part:

- No one individual method provides the necessary level of precision **for determining a fair return, but each method provides useful evidence to facilitate the exercise of an informed judgment.** Reliance on any single method or preset formula is inappropriate when dealing with investor expectations because of possible measurement difficulties and vagaries in individual companies' market data.²¹⁵
- Three methods typically are used: (1) the Capital Asset Pricing Model (CAPM), (2) the discounted cash flow (DCF) model, and (3) the bond-yield-plus-risk premium approach. **These methods are not mutually exclusive – no method dominates the others,** and all are subject to error when used in practice. Therefore . . . we generally use all three methods and choose among them on the basis of our confidence in the data used for each. . . .²¹⁶

²¹³ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 18.

²¹⁴ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 13.

²¹⁵ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 16 (citing Roger A. Morin, *Modern Regulatory Finance* 476 (PUR Books LLC, 2021)) (emphasis included).

²¹⁶ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 16 (citing Roger A. Morin, *Modern Regulatory Finance* 476 (PUR Books LLC, 2021)) (emphasis included).

- In practical work, *it is often best to use all three methods* – CAPM, bond yield plus risk premium, and DCF – and then apply judgment when the methods produce different results. People experienced in estimating equity capital costs recognize that both careful analysis and some very fine judgments are required.²¹⁷

CSWR-Texas further notes that while Ms. Sears did not perform a CAPM in this proceeding, she has presented a CAPM analysis in at least nine prior Commission dockets.²¹⁸ Mr. D’Ascendis testified that while Ms. Sears did not use her CAPM analysis in those cases as a primary method, she did use it to confirm the reasonableness of her other model results.²¹⁹ Additionally, at the hearing, Ms. Sears confirmed that, in prior rate proceedings before the Commission and in a rate proceeding currently pending before the Commission (Docket No. 54634), Staff has performed a CAPM analysis and relied upon those results to either calculate Staff’s ROE recommendation or to check the reasonableness of Staff’s other ROE analyses.²²⁰ In fact, the Company asserts that the Commission itself relied on RPM, DCF, and CAPM models as recently as June 2023 in approving a utility’s ROE in an electric rate case.²²¹

²¹⁷ CSWR-Texas Ex. 14 (D’Ascendis Reb.) at 17-18 (citing Eugene F. Brigham and Louis C. Gapenski, *Financial Management – Theory and Practice* 256 (The Dryden Press, 4th Ed., 1985)) (emphasis included).

²¹⁸ CSWR-Texas Ex. 14 (D’Ascendis Reb.) at 18 n.19; Tr. at 134.

²¹⁹ CSWR-Texas Ex. 14 (D’Ascendis Reb.) at 18.

²²⁰ CSWR-Texas Initial Brief at 24; Tr. at 134-38.

²²¹ *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates*, Docket No. 53601, Order on Rehearing at FoF No. 186 (June 30, 2023) (“The results of the discounted cash flow model, the risk premium approach, and capital asset pricing model support an ROE of 9.7%.”).

A CAPM model, Mr. D'Ascendis testified, would have confirmed that Ms. Sears's recommendation was unreasonable.²²² Mr. D'Ascendis replicated the CAPM analyses that Ms. Sears performed in Docket No. 48460 using the market data from this case, and asserted that the historical and forecasted CAPM analysis produced results of 8.96% and 12.98%, respectively.²²³ The resulting average of those results is 10.97%,²²⁴ which Mr. D'Ascendis argued would confirm the reasonableness of Ms. Sears's RPM result of 9.81% but not her DCF model results of 7.59% and 7.11%. As such, the Company argues that if Ms. Sears had performed this analysis, she would have appropriately weighted her RPM result more heavily when making her ultimate recommendation, which would have resulted in a higher ROE recommendation.²²⁵

(ii) Staff's Arguments

Ms. Sears testified that there were several reasons for why she deviated from her prior practice of performing a CAPM analysis. First, when she relocated from the Commission's Water Division to the Rate Regulation Division, she was asked to review her analysis and determine if she wanted to keep the methodologies she had been using for rate proceedings (i.e., single- and multi-stage DCF models and CAPM), or if she wanted to revise them. Given that opportunity, she decided to

²²² CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 19.

²²³ CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 19, Exh. Schedule DWD-R-5.

²²⁴ This represents the overall average of the historical and forecasted CAPM results of 8.96% and 12.98%, respectively. This calculation is similar to how Mr. D'Ascendis calculated his overall CAPM result, which represents the average of the mean (11.77%) and median (11.38%) results of his traditional and empirical CAPM analysis. CSWR-Texas Ex. 10 (D'Ascendis Dir.) at 46.

²²⁵ CSWR-Texas Initial Brief at 25.

replace the CAPM analysis with the RPM approach.²²⁶ She also noted that depending on the economic conditions and the merits of the case, different methodologies can be employed based on what an analyst thinks is reasonable. Upon review of this case, she determined that the two DCF models and the RPM analysis were “relevant enough.”²²⁷ Additionally, she explained that within at least the last 10 years, except for recently in Docket No. 54634,²²⁸ when Staff did perform a CAPM analysis, those results were not used to determine an ROE recommendation but rather served as a qualitative check on the other models’ results.²²⁹

Moreover, Staff argues that Ms. Sears’s prior dockets in which she performed a CAPM analysis do not support the Company’s insistence that all three methods be used because she did not use all three methods in those dockets. Specifically, in those dockets, she performed only one DCF model upon which she based her recommendation and then the CAPM analysis to check the reasonableness of her DCF result.²³⁰ Staff also stresses that the Company did not present a single example of when a DCF method was combined with more than one risk premium method (i.e., RPM and CAPM) in a water case. Even if it had, Staff argues, such an occurrence would not prove that those same models should be used in the current

²²⁶ Tr. at 144.

²²⁷ Tr. at 144-45.

²²⁸ *Application of Southwestern Public Service Company for Authority to Change Rates*, Docket No. 54634, Application (Feb. 8, 2023) (pending).

²²⁹ Tr. at 145. Staff recently filed testimony in Docket No. 54634 on August 11, 2023, in which the results of the CAPM analysis conducted were considered along with the results of the single- and multi-stage DCF models and the RPM analysis to develop Staff’s ultimate ROE recommendation.

²³⁰ Staff Reply Brief at 13-14.

case because, as Mr. D'Ascendis noted, relying on a “preset formula is inappropriate when dealing with investor expectations because of possible measurement difficulties and vagaries in individual companies’ market data.”²³¹

Staff did not challenge Mr. D'Ascendis's CAPM analysis or his 11.58% CAPM result.²³²

(iii) ALJs' Analysis

The evidence shows that the use of multiple cost-of-common-equity models in conjunction with informed expert judgment provides a more accurate and reliable picture of the investor-required ROE than does a narrow evaluation of the results of one model. Additionally, as previously noted, while variation between results is expected, the results of various methods should generally be close to each other or their estimates should have overlapping ranges.

However, the Commission does not require the use of any particular model or models when calculating a utility's ROE, and it is clear that the selection of the appropriate models and their inputs can vary among qualified experts and requires professional judgment. Accordingly, the ALJs do not fault Ms. Sears for not performing a CAPM analysis.

²³¹ Staff Reply Brief at 14; *see* CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 16 (citing Roger A. Morin, *Modern Regulatory Finance* 476 (PUR Books LLC, 2021)) (emphasis not included).

²³² *See* Staff Initial Brief.

Nevertheless, the ALJs find useful Mr. D'Ascendis's replication of Ms. Sears's prior CAPM analysis using the market data for this proceeding. As Mr. D'Ascendis testified, this replicated analysis resulted in an average 10.97%, which would have validated Ms. Sears's 9.81% RPM result but not her DCF results. For this reason, and based on the ALJs' prior conclusion that Ms. Sears's modified 9.90% RPM result is reasonable, the ALJs further find that the 10.97% average of the replicated CAPM analysis is reasonable.

The ALJs previously concluded that Ms. Sears's modified 9.34% single-stage DCF and 9.90% RPM results should be considered and that her multi-stage DCF result should be disregarded. Thus, when comparing the 10.97% replicated CAPM result to Mr. D'Ascendis's 9.16% DCF result and Ms. Sears's modified DCF and RPM results, the ALJs conclude they are generally close to each other.

Again, while Staff did not present any criticisms of Mr. D'Ascendis's CAPM application or result, the ALJs are left questioning why there is such a large divide between his CAPM result and the reasonable and "generally close" results discussed above. Additionally, the ALJs question why Mr. D'Ascendis's 11.58% CAPM result is so much higher than the prior Commission-approved ROEs for water utilities, as previously discussed.²³³

²³³ Docket No. 50944, Order at FoF Nos. 84-85; Docket No. 46747, Order at FoF Nos. 17-18; Docket No. 46245, Order at FoF No. 126; Docket No. 45720, Order at FoF No. 41; *see also* Staff Ex. 5 (Docket Nos. 50557, 50200, 49887, 49337, and 48819).

The Company bears the burden to prove its requested ROE is reasonable, and for the reasons addressed above, the ALJs find that it did not sufficiently demonstrate that Mr. D'Ascendis's 11.58% CAPM result, representing a 2.42 basis points difference from his DCF result, is reasonable and should be used to calculate the Company's ROE.

d) Business Risk

Mr. D'Ascendis adjusted his recommended ROE range upward by 1.50% to reflect what he argued was the Company's "greater business risk due to its substantially smaller size relative to the Utility Proxy Group and extraordinary operating risk."²³⁴ Ms. Sears did not adopt Mr. D'Ascendis's business risk adjustment, and the Company argues that her failure to do so resulted in her ROE recommendation being significantly understated.²³⁵

Mr. D'Ascendis opined that his recommended business risk adjustment is necessary because of the Company's extraordinary operating risks due to "its acquisition of mainly troubled water and wastewater systems, which is only exacerbated by its small size."²³⁶ He testified that while the rehabilitation of troubled systems generally makes up a small portion of the operations of the Utility Proxy Group, it is the majority of the Company's operations due to its numerous

²³⁴ CSWR-Texas Ex. 10 (D'Ascendis Dir.) at 8.

²³⁵ CSWR-Texas Initial Brief at 26.

²³⁶ CSWR-Texas Ex. 10 (D'Ascendis Dir.) at 55.

acquisitions of such systems, many of which were at the behest of the Commission or other state agencies.²³⁷

Additionally, he asserted that the Company's smaller size relative to those proxy companies indicates a greater relative business risk.²³⁸ To support his position that size is a risk factor that must be reflected when estimating a utility's ROE and that smaller firms have greater risk, he cited to various economic literature purporting that investors generally demand greater returns from smaller firms to compensate for less marketability and liquidity of their securities.²³⁹

Staff opposes an adjustment for risk, arguing that that the risk Mr. D'Ascendis based his recommendation upon should be greatly diminished once the Commission sets new rates. Once that occurs, the Company will be able to charge rates that allow it to recuperate the capital costs expended to upgrade the applicable systems to bring them into compliance with various state and federal standards and to keep up with increasing operations and maintenance expenses. Staff contends that by charging those newly approved rates, any future operational risks above and beyond that of other similar water utilities is eliminated.²⁴⁰ Staff further argues that to award the

²³⁷ The Company argues that unlike the larger more established companies in the utility proxy group, CSWR-Texas is almost wholly comprised of water and wastewater system that were out of compliance and required immediate upfront influx of capital to fund repairs, improvements, and updates to their operations and maintenance practices immediately upon acquisition. CSWR-Texas witness Josiah Cox listed the systems that the Company has acquired based on its conversations with the Commission and other state agencies, many of which are subject to this proceeding. CSWR-Texas Ex. 3 (Cox Dir.) at 14:1-5; CSWR-Texas Ex. 11 (Cox. Reb.) at 14-16.

²³⁸ CSWR-Texas Ex. 10 (D'Ascendis Dir.) at 51-52 ("all else being equal, size has a material bearing on risk . . . because smaller companies generally are less able to cope with significant events that affect sales, revenues, and earning.").

²³⁹ CSWR-Texas Ex. 10 (D'Ascendis Dir.) at 52-54.

²⁴⁰ Staff Initial Brief at 34.

Company a premium for business risk would provide it with an opportunity to earn a higher return on its investment than it is entitled to and would allow the Company to charge an improper elevated rate well after it has eliminated any risk posed by such troubled systems.

Ms. Sears opined that that an upward adjustment to account for the Company's relative size is inappropriate because such a size adjustment conflicts with the Commission's precedent for water and electric utilities going back more than 20 years.²⁴¹ For example, recently, in Docket No. 46245, the Commission recently rejected a water utility's requested ROE that included a small-size risk premium. The utility in that docket operates two water systems serving a total of 927 water customers, which is significantly less than the approximately 300,000 Texas customers served by the Company.²⁴²

Additionally, Ms. Sears challenged Mr. D'Ascendis's arguments that the Company's alleged business risk is exacerbated by its size, arguing that the basic nature of a water utility's business does not change significantly with respect to size.²⁴³ To support this position, she cited to financial literature that considered size premiums in the utility industry and determined that, in contrast to the literature findings cited by Mr. D'Ascendis, "neither large nor small utilities merit a premium

²⁴¹ Staff Ex. 1A (Sears Dir.) at 24-25.

²⁴² Staff Ex. 1A (Sears Dir.) at 24.

²⁴³ Staff Ex. 1A (Sears Dir.) at 24.

because of their size”²⁴⁴ and that “business and financial risks are very similar among the utilities regardless of their size ... and the findings suggest that there is no need to adjust for the firm size in utility rate regulations.”²⁴⁵

In sum, according to Staff, the Company failed to prove why the Commission should deviate from its long-standing precedent in this case, and approval of the Company’s requested risk premium adjustment is inappropriate and contravenes general ratemaking principles.²⁴⁶

The ALJs find there is insufficient evidence and reasoning to deviate from the Commission’s long-standing precedent of rejecting size-related premiums. Additionally, the ALJs find that much of the extraordinary business risks the Company refers to will be mitigated with the Commission’s ultimate approval of the rates in this case as they will account for the significant capital the Company has invested to rehabilitate the systems. Thus, the ALJs conclude the requested 1.50% upward adjustment is unreasonable as it would allow the Company to earn a higher return on its investment than it is entitled to.

However, the ALJs commend the Company for acquiring numerous troubled systems and bringing them into compliance and conclude that some upward

²⁴⁴ Staff Ex. 1A (Sears Dir.) at 24 (citing Wallace Davidson III, Kenneth Ferris, and William Reichenstein, *A Note on the Relationship Between Firm Size and Return in the Electric Utility Industry*, Journal of Accounting, Auditing, and Finance Vol. 8, Issue 3, 193-202 (1993)).

²⁴⁵ Staff Ex. 1A (Sears Dir.) at 24 (citing Annie Wong, *Utility Stocks and the Size Effect: An Empirical Analysis*, Journal of Midwest Finance Association at 98 (1993)).

²⁴⁶ Staff Initial Brief at 34-35; Staff Ex. 1A (Sears Dir.) at 24-25.

adjustment for its business risk in doing so is warranted and consistent with recent Commission precedent.²⁴⁷ Accordingly, the ALJs recommend approval of a 0.50% upward adjustment in recognition of the Company's business risk in acquiring numerous distressed systems.

4. ALJs' ROE Recommendation

For the reasons addressed below, the ALJs recommend a 10.03% ROE for the Company.

As previously noted, the ALJs concluded that Ms. Sears's multi-stage DCF result is unreliable and recommend it be disregarded for purposes of calculating a reasonable ROE for the Company. Additionally, the ALJs concluded there was insufficient evidence to justify the large discrepancy between Mr. D'Ascendis's RPM and CAPM results and the results determined to be reasonable (i.e., his DCF result and Ms. Sears's modified DCF and RPM results). Therefore, the ALJs were unable to determine whether his RPM and CAPM results are reasonable and should influence their recommended ROE for the Company.

Accordingly, the ALJs conclude the more prudent approach is to use the following results for purposes of calculating a reasonable ROE for the Company:

- Mr. D'Ascendis's 9.16% DCF result;
- Ms. Sears's modified 9.34% single-stage DCF result; and
- Ms. Sears's modified 9.90% RPM result.

²⁴⁷ Docket No. 53601, Order on Rehearing at FoF No. 185 (June 30, 2023) ("A 9.7% ROE is consistent with Oncor's business and regulatory risk.").

Additionally, the ALJs find that while the 10.97% replicated CAPM result produced by Mr. D'Ascendis is sufficient to validate the reasonableness of the results listed in the bullet points above, there is too much uncertainty regarding the analysis underlying that result to use it in calculating a reasonable ROE for the Company. Thus, the ALJs recommend that it be used solely as a qualitative check.

In sum, the ALJs conclude the evidence indicates a reasonable range for the Company's ROE is 9.16% - 9.90%. The ALJs also conclude that a 0.50% upward adjustment for the Company's business risk is warranted, which results in a revised ROE range of 9.66% - 10.40%. Ultimately, the ALJs recommend the Commission adopt the mid-point of 10.03% as the best approximation of an appropriate ROE for CSWR-Texas.

B. COST OF DEBT

CSWR-Texas proposes a 6.52% cost of debt, which represents the actual weighted effective cost of debt of its out-of-state affiliates. The Company proposes to use its sister companies' cost of debt as a proxy because it has not yet been able to acquire debt financing for its Texas operations.²⁴⁸ The Company argues its proposal is reasonable because it follows the same business model as its sister companies and they have similar risk profiles. For these reasons, the Company argues a 6.52% proxy cost of debt represents the best gauge of what interest rates would be available when

²⁴⁸ CSWR-Texas Ex. 10 (D'Ascendis Dir.) at 21, Exh. DWD-2; CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 4-6.

the Company seeks to acquire long-term debt upon the Commission's approval of rates in this proceeding.²⁴⁹

Staff opposes the Company's request, arguing there is no precedent of the Commission accepting a cross-state comparison to establish a utility's cost of debt in Texas. Staff also argues the Company failed to provide any comparable information or data on the regulatory business environments of the Company's affiliates' applicable states that would have allowed Staff to analyze the actual, long-term debt costs in those states to confirm if it would be applicable to the current proceeding.²⁵⁰ Additionally, Ms. Sears noted that the Company's proposal is well above the public utility bond average for the past 12 years.²⁵¹ Staff opines that, using the Mergent Bond Records as a guide, the Company's proposal represents a "significant premium over Baa Public Utility Bond Yields,"²⁵² rendering the proposal equivalent to speculative and non-investment grade junk bonds.²⁵³

Instead, Staff proposes a 5.03% cost of debt based on the average bond yields for utilities with a Baa bond rating in 2022.²⁵⁴ This cost of debt, Staff argues, is well within the average cost of debt approved by the Commission and is comparable to

²⁴⁹ CSWR-Texas Initial Brief at 28; CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 5-6.

²⁵⁰ Tr. at 143.

²⁵¹ Staff Ex. 1A (Sears Dir.), Attachment ES-11; *see* Staff Ex. 5 (Rate of Return Report (Sept. 7, 2023)).

²⁵² CSWR-Texas Ex. 14 (D'Ascendis Reb.) at 5.

²⁵³ Tr. at 143.

²⁵⁴ Staff Ex. 1A (Sears Dir.) at 21.

other public utility bond rates issued for the year ending December 2022.²⁵⁵ As Ms. Sears noted, “[w]hile this information might not reflect the exact cost at which [the Company] could obtain debt, it is the best approximation of the cost of debt for a public utility during the test year.”²⁵⁶

CSWR-Texas challenges Staff’s proposal, arguing Staff ignored the Company’s unique operating risks, including its current and historical net operating losses, which makes it unable to secure debt at 5.03%.²⁵⁷ Additionally, Mr. D’Ascendis testified that Staff produced no evidence that, if rated, the Company would receive a Baa rating.²⁵⁸ Based on his comparison of the Company’s sister companies and Ms. Sears’s data for the average yield on Baa public bonds from 2022, Mr. D’Ascendis noted that the Company’s sister companies paid a “significant premium” over those bonds, which indicates they would be rated below Baa. He reasoned this represents a comparable example to the Company and indicates the Company would also have a bond rating lower than Baa.²⁵⁹ For these reasons, CSWR-Texas argues there is no evidence to suggest that the 2022 Baa bond rating-based cost of debt is reasonable, or even realistic, for the Company.

Moreover, the Company notes that Ms. Sears’s Exhibit ES-11 shows that the cost of debt for Baa-rated utilities was 5.60% during the first six months of 2023 and

²⁵⁵ Staff Ex. 1A (Sears Dir.) at 21-22.

²⁵⁶ Staff Ex. 1A (Sears Dir.) at 22.

²⁵⁷ CSWR-Texas Reply Brief at 14.

²⁵⁸ Tr. at 130-31.

²⁵⁹ CSWR-Texas Ex. 14 (D’Ascendis Reb.) at 6-8.

that she failed to explain why she used the 2022 data instead of the more current data.²⁶⁰ Thus, the Company requests that if the Commission defers to Baa Public Utility Bond averages to determine its cost of debt, that it adopt the most current values, which would result in a 5.60% cost of debt instead of 5.03%.²⁶¹

Finally, CSWR-Texas argues that, in asserting that the Company's requested cost of debt signals its business model is equivalent to a "speculative, junk bond" that is too risky, Staff ignores the fact that the Texas Legislature and the Commission have encouraged larger, more experienced utility companies to acquire these distressed systems.²⁶²

It is undisputed that because CSWR-Texas has no debt, its cost of debt must be estimated. The ALJs conclude that Ms. Sears did not use the most current data available and therefore the 2023 data indicating a 5.60% cost of debt for Baa-rated utilities should be considered instead of her 5.03% proposal. However, in conflict with the underlying basis of Staff's recommendation, the evidence shows that the Company, if rated, would not qualify for a Baa rating. Instead, the Company would likely pay a premium for debt, like its sister companies, compared with the prevailing Baa Public Utility Bond Yields. Nevertheless, the ALJs find that the 6.52% cost of debt the Company proposes is out of line with historically approved

²⁶⁰ Tr. at 129-30.

²⁶¹ CSWR-Texas Reply Brief at 15.

²⁶² Tr. at 143. As stated previously, the Company acquired many of the systems subject to this proceeding at the behest of the Commission and other state agencies. CSWR-Texas Ex. 11 (Cox Reb.) at 12-14.

costs of debt and there is insufficient data to prove it is reasonable for the Company's Texas operations.

In sum, the ALJs find the Company's requested cost of debt too high and Staff's proposal too low. A reasonable cost of debt, therefore, lies somewhere between 5.60% and 6.52%. To account for this discrepancy, the ALJs recommend the mid-point of 6.06% as a reasonable cost of debt for CSWR-Texas.

C. CAPITAL STRUCTURE

Similar to the discussion above, because CSWR-Texas does not carry any debt, the Company requested a hypothetical capital structure of 45% long-term debt and 55% common equity.²⁶³ Staff proposed a capital structure of 48% debt and 52% equity based on the industry average.²⁶⁴

Mr. D'Ascendis explained that his proposal for a 55% common equity "is generally consistent with the higher range of common equity ratios maintained by the Utility Proxy Group" and that he "chose a higher-than-average hypothetical capital structure for CSWR-Texas due to its extraordinary operating risks."²⁶⁵ In its reply brief, the Company clarified that while Mr. D'Ascendis agreed that Staff's

²⁶³ CSWR-Texas Ex. 10 (D'Ascendis Dir.) at 22; CSWR-Texas Ex. 1 (Application), Exh. Schedule III-1; CSWR-Texas Initial Brief at 29.

²⁶⁴ Staff Ex. 1a (Sears Dir.) at 22, Exh. ES-4.

²⁶⁵ CSWR-Texas Ex. 10 (D'Ascendis Dir.) at 20.

proposal was also reasonable, it did not adopt that position in its proposed revenue requirement.²⁶⁶

The ALJs find that Staff's proposal is reasonable and that the Company did not sufficiently demonstrate that a 55% common equity was reasonable or necessary due its operating risks, particularly considering the 0.50% upward adjustment to ROE recommended above. Thus, the ALJs recommend a capital structure of 48% debt and 52% equity be adopted.

D. OVERALL RATE OF RETURN

Based on the forgoing discussion, the ALJs recommend the Company be provided an opportunity to earn an overall rate of return of 8.13%, as provided below:²⁶⁷

Summary of Recommended Rate of Return

Type of Capital	Ratios	Cost Rate	Weighted Cost Rate
Long-Term Debt	48.00%	6.06%	2.91% ²⁶⁸
Common Equity	52.00%	10.03%	5.22% ²⁶⁹
Total	<u>100.00%</u>		<u>8.13%</u>

²⁶⁶ CSWR-Texas Reply Brief at 14.

²⁶⁷ The Company requested an overall rate of return of 9.61% and Staff recommended an overall rate of return of 6.68%. CSWR-Texas Ex. 10 (D'Ascendis Dir.) at 6; Staff Ex. 1A (Sears Dir.) at 23.

²⁶⁸ This figure was rounded to its nearest hundredth.

²⁶⁹ This figure was rounded to its nearest hundredth.

IX. RATE DESIGN AND TARIFFS

A. CONSOLIDATED RATE DESIGNS

Notwithstanding the discussion on meter equivalent ratios (MERs) below, no party challenged the Company's proposed water and wastewater rate designs.²⁷⁰ Summaries of the specific rate designs are provided below:

- For its water systems, the Company is proposing to utilize a two-part rate consisting of a monthly fixed charge, which increases based on meter size, and a uniform volumetric rate applied per 1,000 gallons of usage.²⁷¹ For systems that do not use water meters, customers are simply billed a flat amount per month regardless of usage.²⁷²
- For its wastewater systems, the Company is proposing a flat, system-wide monthly sewer rate for all customers.²⁷³

In designing its requested rates, the Company did not rely on the MERs recommended in the Class B RFP or by Staff. Instead, the Company proposes a nonstandard meter ratio. Staff opposes the Company's proposal and recommends

²⁷⁰ As discussed above, Mr. Hill did not contest the Company's overall request but argued for Quiet Village II specifically to be excepted from the requested consolidation and rate increases. Quiet Village Ex. 2.

²⁷¹ CSWR-Texas Ex. 8 (Ekrot Dir.) at 39-40.

²⁷² The Company asserts this approach will standardize and modernize the rates while also mitigating rates compared to stand-alone rates, and further asserts that charging a volumetric rate also encourages conservation.

²⁷³ The Company contends a flat rate design is necessary because over half of its current sewer customers are currently billed a flat, uniform rate per month or are billed based on volumetric data obtained from another provider; thus, this approach would result in a simplified rate design. CSWR-Texas Ex. 1 (Application), Exh. B.

that the Commission's standard meter ratios be adopted instead.²⁷⁴ The Company does not oppose Staff's MERs recommendation.²⁷⁵

The ALJs recommend the Company's proposed consolidated rates be adopted, as modified to incorporate Staff's MERs recommendation and the ALJs' recommendations set forth in the PFD.

B. STANDARDIZED TARIFFS

In addition to consolidating the rates and tariffs for the 62 water systems and 12 wastewater systems, the Company proposes to standardize its water and sewer tariff terms and conditions as well as its miscellaneous fees across all systems.²⁷⁶

Staff opposes CSWR-Texas's proposed tariff revisions based on its previously rejected arguments that the substantial similarity standard applies and that the Company's annualized test-year data for certain systems is inadequate. This argument is rejected for the reasons previously provided.

The ALJs recommend approval of the Company's proposed standardization of its water and wastewater tariff terms and conditions and miscellaneous fees.

²⁷⁴ Staff Ex. 2 (Blanchard Dir.) at 6.

²⁷⁵ The Company stated that Staff's recommendation would impact only 72 customers out of the total 7,106 customers affected by the Application, or approximately 1% of CSWR-Texas's customer base. CSWR-Texas Ex. 13 (Ekrut Reb.) at 29-30.

²⁷⁶ CSWR-Texas Ex. 8 (Ekrut Dir.) at 44-45.

X. PASS-THROUGH PROVISIONS

CSWR-Texas proposes pass-through charges for groundwater production fees, purchased water fees, and/or purchased sewer treatment costs for the following systems: Hilltop Home Addition, Hilltop Estates, Laguna Tres, Laguna Vista, Treetops Phase I, WaterCo, Emerald Forest, Grande Casa Ranchitos, Lakeview Ranchettes Estates, Spanish Grant, Oak Hills Ranch Estates, Oak Hill Ranchettes, Tall Pines Utility, Copano Cove, Copano Ridge, Copano Heights Units 1 & 2, Franklin Water Systems 1 & 3, Quiet Village II, and Woodland Harbor.²⁷⁷

As an initial matter, Staff does not challenge the pass-through provisions requested by the Company to account for charges from Laguna Ocho/M&I to the Laguna Vista and Laguna Tres systems or from the City of Lubbock to the Franklin Water Systems 1 & 3.²⁷⁸ As such, the ALJs recommend those requests be approved.

For the remaining systems, CSWR-Texas either requested changes to existing pass-through calculations or proposed the establishment of pass-through provisions. Those requests, and Staff's corresponding objections, are discussed below.

²⁷⁷ CSWR-Texas Ex. 8 (Ekrut Dir.) at 44-45; Staff Ex. 3 (Eiland Dir.) at 20-21 (Table KE-10) (Ms. Eiland generated this table based on CSWR-Texas witness Chris Ekrut's direct testimony).

²⁷⁸ Staff Ex. 3 (Eiland Dir.) at 19 (Ms. Eiland confirmed the Company's proposed pass-through rates for Franklin Water 1 and 3 (charged by the City of Lubbock for purchased wholesale treated water) and for Laguna Tres and Laguna Vista (charged by Laguna Ocho/M&I for emergency purchased wholesale water) were correct in the third errata to her testimony); Staff Reply Brief at 20.

A. STAFF'S ARGUMENTS

The following table represents the systems that have existing pass-through provisions for which Staff contests the Company's requested changes:²⁷⁹

Pass-Through Entity	Source of Water	Facilities
Prairielands Groundwater Conservation District	Groundwater Production Fees	Emerald Forest, Grande Casa Ranchitos, Lakeview Ranchettes Estates, and Spanish Grant
North Harris County Regional Water Authority	Groundwater Production Fees	Tall Pines Utility
Buena Vista Bethel Special Utility District	Emergency Purchased Wholesale Treated Water	Emerald Forest, Grande Casa Ranchitos, Lakeview Ranchettes Estates, and Spanish Grant
City of Rockport	Purchased Wholesale Treated Water	Copano Heights Units 1&2

Staff recommends denial of the Company's proposed pass-through provisions to account for charges from the Prairielands Groundwater Conservation District (GCD) and the North Harris Regional Water Authority (RWA) to the systems listed

²⁷⁹ Emerald Forest, Grande Casa Ranchitos, Lakeview Ranchettes Estates, and Spanish Grant are charged pass-through rates from two separate entities for different purposes: the Prairielands Groundwater Conservation District (GCD) charges for groundwater production fees and the Buena Vista Bethel Special Utility District (BVBSUD) charges for emergency purchased wholesale treated water. The ALJs generated this table by revising the Table KE-11 provided in Ms. Eiland's testimony to include the existing BVBSUD pass-through provisions. *See* Staff Ex. 3 (Eiland Dir.) at 21.

above because the current pass-through charges from those entities is already incorporated in the rate. Therefore, Staff contends no change is warranted.²⁸⁰

Staff also argues that, because Rule 24.25(b)(2) is the only Commission rule that addresses pass-through provisions, it governs both the Company's request to revise the existing pass-through provisions above as well as its request to establish the new pass-through rates identified below. As such, Staff maintains the Company was required to comply with Rule 24.25(b)(2)(F)(i)(V) and provide 12 months of historical line loss documentation to support its proposed changes to the pass-through provisions from the Buena Vista Bethel Special Utility District (BVBSUD) and the City of Rockport to the systems listed above. Staff witness Eiland confirmed that the Company did not provide that data for these systems and recommended the Company's requests be denied.²⁸¹

The following table represents the systems for which the Company is requesting to establish new pass-through provisions.²⁸²

Pass-Through Entity	Source of Water	Facilities
Upper Trinity Groundwater Conservation District	Groundwater Production Fees	Hilltop Home Addition, Hilltop Estates, Laguna Tres, Laguna Vista, and Treetops Phase I

²⁸⁰ Staff Ex. 3 (Eiland Dir.) at 21.

²⁸¹ Staff Ex. 3 (Eiland Dir.) at 19.

²⁸² Quiet Village II is charged pass-through rates from the North Alamo Water Supply Corporation (WSC) for two different purposes: groundwater production fees and purchased wastewater treatment from the City of Donna.

Pass-Through Entity	Source of Water	Facilities
Upper Trinity Groundwater Conservation District	Groundwater Production Fees	WaterCo
Guadalupe County Groundwater Conservation District	Groundwater Production Fees	Oak Hills Ranch Estates and Oak Hill Ranchettes
City of Rockport	Purchased Wholesale Treated Water	Copano Cove and Copano Ridge
North Alamo Water Supply Corporation	Purchased Wholesale Treated Water	Quiet Village II
Bi-County Water Supply Corporation	Emergency Purchased Wholesale Treated Water	Woodland Harbor
North Alamo Water Supply Corporation (City of Donna)	Purchased Wastewater Treatment from City of Donna (Billed through North Alamo Water Supply Corporation)	Quiet Village II

Ms. Eiland recommended denying the Company's proposed establishment of pass-through provisions for the pass-through entities above for three reasons. First, Ms. Eiland disagreed with the proposed pass-through provisions to account for charges from the Upper Trinity GCD to Hilltop Home Addition, Hilltop Estates, and Treetops Phase 1 because the Company averaged the line-loss percentages across these systems instead of calculating a line-loss percentage for each system separately.²⁸³ Staff argues this is problematic because there is a lack of individualized

²⁸³ Staff Ex. 3 (Eiland Dir.) at 21-22.

data, and as Ms. Eiland noted, “[s]eparate pass-through provisions do not require an annual true-up and are more administratively efficient as opposed to a combined pass-through provision.”²⁸⁴

Second, Ms. Eiland disagreed with the proposed pass-through provisions to account for charges from the Guadalupe County GCD and the North Alamo Water Supply Corporation (WSC) to the systems listed above because the Company assumed a 15% line-loss factor for these systems, as historical data for the systems was either unavailable or inadequate. Thus, Ms. Eiland testified that such an assumption is improper because it is not supported by 12 months of historical documentation and therefore does not comply with Rule 24.25(b)(2).

Finally, Ms. Eiland disagreed with the Company’s proposed pass-through provisions to account for charges from the Upper Trinity GCD to WaterCo, and from the City of Rockport and Bi-County WSC for the systems listed above, because the Company did not file any historical line-loss data for those systems. As a result, Ms. Eiland testified that she was unable to determine whether the Company’s requests were supported under Rule 24.25(b)(2)(F)(i)(IV), which requires documentation supporting the stated amounts of any new or modified pass-through costs.²⁸⁵

²⁸⁴ Staff Ex. 3 (Eiland Dir.) at 22. There appears to be a disconnect between Ms. Eiland’s testimony and Staff’s assertion that Mr. Ekrut’s averaging of these systems’ line-loss data “presents a practical problem, since true-ups have to be performed on a system-by-system basis and there is no mechanism for performing a true-up of a combined pass-through provision.” Staff Initial Brief at 53 (citing to a portion of Ms. Eiland’s direct testimony applicable to different systems).

²⁸⁵ Staff Ex. 3 (Eiland Dir.) at 22.

Although Staff initially supported Ms. Eiland’s recommendation to disallow each of the requested pass-through provisions discussed above,²⁸⁶ Staff presented an alternative solution for the first time in its reply brief. Staff conceded that all of Ms. Eiland’s recommendations focus on line-loss data, which does not affect the actual costs charged by the pass-through entities identified above. Thus, Staff currently contends that:

Notwithstanding ‘the language of the formula that requires actual line loss data for the preceding 12 months’. . . the fact remains that CSWR-Texas can still collect on its actual costs without including line loss information. Accordingly, for the systems that did not include sufficient line loss data, Staff recommends that CSWR-Texas only collect the gallonage charge by the source supplier and file to update its tariff when it has sufficient line loss data.’’²⁸⁷

B. CSWR-TEXAS’S ARGUMENTS

First, CSWR-Texas witness Ekrut confirmed that the Company did not propose changes to the current pass-through fees charged by the Prairielands GCD and the North Harris RWA.²⁸⁸ Thus, the amounts proposed by the Company for those pass-through entities reflects the current charge.

Next, the Company argues that Staff’s reliance on Rule 24.25(b)(2)(F)(i)(IV)-(V) is misguided because it applies only to a “minor tariff change” made outside the scope of a comprehensive rate case and is therefore inapplicable in this proceeding.

²⁸⁶ Staff Initial Brief at 52-54.

²⁸⁷ Staff Reply Brief at 19 (citations omitted).

²⁸⁸ CSWR-Texas Ex. 8 (Ekrut Dir.) at 47-48.

The Company further argues that Staff overlooked Rule 24.25(b)(2)(D), which specifically allows a utility to file a true-up report for a combined pass-through charge.²⁸⁹

The Company also alleges that readdressing the proposed pass-through rate provisions after this proceeding once it has 12 months of historical line loss data for the systems, as Staff proposes, will waste resources.

Finally, the Company contends that if its requested pass-through provisions are denied, the costs that make up those proposed provisions must be incorporated into its base rate revenue requirement to be included in the rates approved as part of this proceeding.²⁹⁰ Failure to incorporate those costs, the Company asserts, would essentially disallow recovery of costs otherwise deemed just and reasonable.²⁹¹

C. ALJs' ANALYSIS

The ALJs first address the Company's requests regarding systems with existing pass-through provisions. Initially, the ALJs find that Staff did not present evidence to show that the current pass-through fees charged by the Prairielands GCD and the North Harris RWA differ from what the Company proposed. Given

²⁸⁹ 16 Tex. Admin. Code § 24.25(b)(2)(D) ("A change in the combined pass-through provision may be implemented only once per year. The utility must file a true-up report within one month after the end of the true-up period. The report must reconcile both expenses and revenues related to the combined pass-through charge for the true-up period.").

²⁹⁰ CSWR-Texas Ex. 13 (Ekrut Reb.) at 25, Exh. CDE-R-1 through CDE-R-36. Mr. Ekrut provided calculations to the Company's revenue requirement reflecting that change.

²⁹¹ CSWR-Texas Ex. 13 (Ekrut Reb.) at 25, Exh. CDE-R-1 through CDE-R-36.

that the Company confirmed it did not propose a change to those existing fees, the ALJs find the Company's proposed pass-through fees for those entities represent the current charges and recommend that they be approved.

Next, the ALJs recommend the Commission deny the Company's proposed pass-through provisions to be charged by BVBSUD and by the City of Rockport to Copano Heights Units 1 & 2 and keep the existing provisions in place. Although the Commission has no rules regarding pass-through provisions independent of Rule 24.25(b)(2) concerning minor tariff changes, the ALJs conclude that the rule and its required documentation are nevertheless instructive of what is necessary for the proper calculation and review to determine the reasonableness of a pass-through provision. Although the current proceeding is a comprehensive rate case and the Commission has access to a wider range of data than it would if the Company were seeking just a minor tariff change, the fact remains that the Company has not provided enough information to determine whether the proposed pass-through rate is reasonable. Thus, the Company has not supported an adjustment to the rate.²⁹²

Turning to the requested pass-through provisions for those systems that do not currently have any, the ALJs recommend the Commission approve the Company's proposals for pass-through fees to be charged by the Upper Trinity GCD to Hilltop Addition, Hilltop Estates, Laguna Tres, Laguna Vista, and Treetops Phase 1. The ALJs conclude that a combined or averaged pass-through rate, as the Company proposed for those systems, is consistent with Rule 24.25(b)(2)(D). In

²⁹² See 16 Tex. Admin. Code § 24.25(b)(2)(F)(i)(V).

addition, because Staff did not challenge whether the Company provided the 12 months of historical data for those systems, the ALJs presume the Company's proposal is also consistent with Rule 24.25(b)(2)(F).

Finally, the ALJs recommend the Commission deny the Company's remaining proposed pass-through provisions to be charged by the Guadalupe County GCD; North Alamo WSC; Upper Trinity GCD to WaterCo; the City of Rockport to Copano Cove and Copano Ridge; and Bi-County WSC. The Company did not present 12 months of historical line-loss data for these systems, and therefore its proposals are not consistent with 24.25(b)(2)(F). As noted above, without that breadth of data, it is impossible to determine whether the requested pass-through provisions are reasonable. However, for these systems, the ALJs also recommend that, as presented by Staff, the Company be authorized to collect the gallonage charge by the pass-through entity or source supplier until it files an application for a minor tariff change to update those provisions when it has sufficient line-loss data for the systems.²⁹³

XI. RATE CASE EXPENSES

For the reasons addressed below, the ALJs recommend that the Company recover \$459,367 in rate case expenses to be surcharged over a 24-month period. Additionally, the ALJs recommend approval of Staff's uncontested proposal to

²⁹³ Because minor tariff changes are not subject to the 12-month stay-out period under Rule 24.29(b) and may be processed without a contested case hearing, they can be filed as soon as the relevant data is available. *See* 16 Tex. Admin. Code § 24.29(b)(1), (4).

allocate the approved rate-case-expenses surcharge amongst each system identified in the Application and the Leon Springs and Shady Grove sewer facilities.²⁹⁴

A. REQUESTED AMOUNT

CSWR-Texas seeks to recover \$484,367 in rate case expenses.²⁹⁵ Staff supports the Company's request to recover the entire amount requested except for a \$25,000 flat fee charged to the Company by ScottMadden, Inc. for providing the direct testimony of Mr. D'Ascendis and his supporting schedules exhibits.²⁹⁶ Staff witness Eiland testified that this flat fee should be disallowed because it is "a fixed-fee billing and is not supported by any billing information, such as hours billed, rates charged per hour, and a detailed description or dates of the work performed," as required by Rule 24.44(b).²⁹⁷

In addition, Staff asserts that without knowing the hourly rate charged by Mr. D'Ascendis, Staff is unable to determine whether his hourly rate exceeded the hourly rates previously disallowed by the Commission in other rate cases.²⁹⁸ Thus, Staff argues it is unable to determine whether this expense is reasonable and

²⁹⁴ Staff Initial Brief at 49.

²⁹⁵ CSWR-Texas Ex. 12 (Thies Reb.), Exh. BT-R-3 at 23; CSWR-Texas Reply Brief, Exhibit A. In accordance with Staff's request, the Company submitted with its reply brief an update of its rate case expenses to reflect all expenses incurred through August 31, 2023. Staff Initial Brief at 48. Staff witness Ms. Eiland recommended that the Commission update the amount of RCEs surcharge during the number-running process based on the Company's updated rate case expenses. Staff Ex. 3 (Eiland Dir.) at 28.

²⁹⁶ Staff Ex. 3 (Eiland Dir.) at 24-25.

²⁹⁷ Staff Ex. 3 (Eiland Dir.) at 26-27.

²⁹⁸ See *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 51415, FoF No. 309 and CoL No. 40 (Jan. 14, 2022) (disallowing hourly attorney rates in excess of \$550 per hour as unreasonable).

necessary, as required by Rule 24.44(a).²⁹⁹ For these reasons, Staff argues the requested \$25,000 fixed fee is unsubstantiated and should be disallowed. Staff opines that approval of this expense would create bad precedent because utilities seeking to recover rate case expenses in future proceedings could simply request reimbursement without providing support or details to verify its requests.³⁰⁰

CSWR-Texas argues that there is no rule or policy restricting fixed-fee billing arrangements absent a finding that the specific fee is unreasonable based on the factors in Rule 24.44(b).³⁰¹ Company witness Thies explained that using a fixed-fee agreement for its outside cost of capital expert in this proceeding was reasonable because it provides some certainty by capping the cost of a typically complicated piece of expert testimony.³⁰² Mr. Thies reasoned that “expert witnesses commonly charge flat fees for work in Texas” like Mr. D’Ascendis did in this case and that, based on the Company’s experience in other states, hourly expenses for expert cost of capital testimony often exceed \$25,000.³⁰³

The ALJs conclude that Rule 24.44(b) does not bar fixed-fee billing arrangements for expert testimony. However, it does require a utility seeking

²⁹⁹ Staff Ex. 3 (Eiland Dir.) at 25.

³⁰⁰ Staff Reply Brief at 18-19.

³⁰¹ CSWR-Texas Initial Brief at 40.

³⁰² CSWR-Texas Ex. 12 (Thies Reb.) at 15.

³⁰³ CSWR-Texas Ex. 12 (Thies Reb.) at 15.

recovery of rate case expenses to “submit information that sufficiently details and itemizes all rate-case expenses,” including evidence showing:

(1) the nature, extent, and difficulty of the work done by the attorney or other professional in the rate case;

(2) the time and labor expended by the attorney or other professional;

(3) the fees or other consideration paid to the attorney or other professional for the services rendered;

(4) the expenses incurred for lodging, meals and beverages, transportation, or other services or materials;

(5) the nature and scope of the rate case, including:

(A) the size of the utility and number and type of consumers served;

(B) the amount of money or value of property or interest at stake;

(C) the novelty or complexity of the issues addressed;

(D) the amount and complexity of discovery;

(E) the occurrence and length of a hearing; and

(6) the specific issue or issues in the rate case and the amount of rate-case expenses reasonably associated with each issue.