

SOAH DOCKET NOS. 582-05-2770, 582-05-2771

TCEQ DOCKET NOS. 2004-1120-UCR, 2004-1671-UCR

APPLICATION BY AQUA UTILITIES,
INC., d/b/a AQUA TEXAS, INC. TO
CHANGE ITS WATER AND SEWER
TARIFFS AND RATES IN VARIOUS
COUNTIES, AND APPEAL OF RATE-
MAKING ACTIONS OF VARIOUS
MUNICIPALITIES DENYING
REQUESTED CHANGES TO WATER
AND SEWER TARIFFS AND RATES

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

SOUTHEAST REGION'S AND SOUTHWEST REGION'S
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGES
PROPOSAL FOR DECISION

CHIEF CLERKS OFFICE

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COMMISSION
ON ENVIRONMENTAL
QUALITY

July 25, 2007

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**SOUTHEAST REGION'S AND SOUTHWEST REGION'S
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGES'
PROPOSAL FOR DECISION**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COME NOW, the Southeast Region Homeowners Group (and Numerous Individual Customers, including Crighton Ridge Homeowners Association) (the "SE Region") and Southwest Region Homeowners Group (the "SW Region"), and file these "Exceptions to the Administrative Law Judges' Proposal for Decision" in opposition to the Application by Aqua Development Company and Aqua Utilities, Inc. d/b/a Aqua Texas, Inc. to change water and sewer tariffs and rates in various counties.

I. INTRODUCTION

The Administrative Law Judges ("ALJs") have published their Proposal for Decision ("PFD") recommending the Commission grant in part, the Aqua Development Company and Aqua Utilities, Inc.'s request to change its water and sewer tariffs and rates in various counties in this proceeding. For the reasons set forth herein, the SE and SW Regions believe that the ALJs' recommendation is erroneous, contrary to the applicable laws and rules related to water and

sewer tariff and rate changes, detrimental to Aqua Texas' customers, and contrary to public policy. Accordingly, the SE and SW Regions respectfully request permission to deny the application in its entirety.

II. SE AND SW REGIONS' EXCEPTIONS AND ARGUMENTS

Aqua Texas' Application to change its water and wastewater tariffs and rates in various counties, which was filed pursuant to Chapter 13 of the Texas Water Code, failed to satisfy the requirements of Chapter 13.¹ Accordingly, the ALJs' PFD recommending Aqua Texas' application be granted, even in part, is flawed and should be rejected.

The Commission's rules expressly place the burden of proof in this proceeding on the Applicant, Aqua Texas.² In this case, Aqua Texas had multiple separate "burdens of proof" which it failed to establish. Specifically, Aqua Texas has failed to prove the following:

- a) that Aqua Texas is the proper "Applicant;"
- b) that Aqua Texas failed to file a Sale Transfer Merger ("STM") as required by Section 13.301;
- c) that the proposed rates are just and reasonable;
- d) that Aqua Texas has any rate base or capital structure upon which to set rates and/or receive a rate of return;
- e) that the water and wastewater systems, as applicable, within its proposed regions are "substantially similar" within the meaning of Section 13.145, TEXAS WATER CODE, for purposes of consolidating the affected systems under single regional tariffs;
- f) that Aqua Texas is entitled to recover its rate case expenses; and/or
- g) that Aqua Texas is justified in receiving a deferred asset or regulator asset based on their revenue requirements.

¹ See TEX. WATER CODE Ch. 13.

² See 30 TAC § 291.12 (burden of proof is on the retail utility to establish that the proposed increased rates will be "just and reasonable"); *cf.*, 30 TAC § 80.17(b) (Section 291.12 (30 TAC) governs burden of proof in retail rate proceedings).

Having failed to meet its burden of proof in one or more of the aforementioned subject matter areas covered by these proceedings, Aqua Texas' application should be denied.

A. Exceptions to ALJs' "IV. Aqua Texas' Standing as Applicant."

The ALJs erred in their finding that Aqua Texas has standing as an applicant because:

(1) Aqua Texas failed to file a Sale, Transfer, Merger ("STM") Application and have it approved by the TCEQ before seeking to change its rates for the systems involved in this case, and (2) Aqua Texas has no debt, equity or capital for which it could seek to recover in this case.³

Section 13.301, Texas Water Code, and Section 291.109 of the Commission's rules (30 TAC) expressly require that an STM application be filed and approved by the Commission at least 120 days before "the effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity..."⁴ As part of that STM application, public notice and opportunity for hearing is required. The record is uncontroverted, no STM application was filed, and no STM was approved. Accordingly, the Applicant, regardless of which "Aqua" entity is the applicant, lacks standing to invoke the Commission's jurisdiction. The statute mandates that the Commission "shall" investigate the proposed sale, transfer, etc., to insure, inter alia that "the transaction will serve the public interest."⁵ The record demonstrates that an STM was not filed, and the Commission neither investigated nor approved the transaction. In addition to the Commission's failure to follow the statutory mandate and its own rules regarding STMs, testimony of Aqua Texas' own witnesses on the issues related to standing, particularly that of Mr. Hugus, the President of the Southern Division of Aqua America, Inc. and the President of Aqua Utilities, Inc., and the President of Aqua Development, Inc., make it clear that Aqua Texas lacks standing

³ See PFD, pg. 10; See also Appendix A, letter from TCEQ requiring an STM, not simply a name change.

⁴ *Id.*

⁵ TEX. WATER CODE § 13.301(d) (emphasis added).

to charge and recover rates, much less, obtain a rate increase. When questioned by Judge Bennett, Mr. Hugus testified:

Aqua Texas has no credit rating. [Aqua Texas] could not borrow any money by itself. None of the systems standing alone could borrow any money by itself.... Aqua Texas has no debt. Aqua America has [all the debt].... Aqua Texas has no capital. It can't raise [capital] itself. Aqua America has a 50/50 capital structure with a different overall debt cost. The capital that was borrowed for Aqua Texas particularly is assigned 50 percent of the capital structure; the equity cost of Aqua America is the other 50 percent. So my answer is: There's a hybrid of issues. Aqua America happens to have 50/50 [capital to debt ratio]. Aqua Texas has an attributed or a hypothetical 50/50. The debt cost component of Aqua Texas is less than the overall cost of Aqua America. The equity is common.⁶

Aqua Texas' alleged capital structure (debt and equity) is actually passed down from Aqua America as an "accounting fiction." It is a hypothetical capital structure, as admitted by Mr. Hugus.⁷ Chuck Loy, one of Aqua Texas' consulting expert witnesses, reaffirmed Mr. Hugus's admission when he testified that the \$90 million dollar debt allocation is kept on Aqua America's books, and is *not* actually directly allocated to Aqua Texas.⁸

Chapter 291 prescribes four basic areas which compose the Cost of Service of the utility applying for a rate increase:⁹ 1) Components of Cost of Service; 2) Allowable Expenses; 3) Return on Invested Capital¹⁰; and 4) Recovery of Positive Acquisition Adjustments¹¹ (emphasis added). The Application, and the evidence of record, demonstrate the Applicant failed to establish at least two of the four Cost of Service elements.

Even assuming Aqua Texas could overcome the threshold jurisdictional issue created by the failure to file and secure approval of an STM application, because Aqua America has all

⁶ See Hugus testimony, pg. 93, ln. 2 through pg. 98, ln. 9.

⁷ See Hugus testimony, pg. 93, ln. 2 through pg. 98, ln. 9.

⁸ See Loy testimony, pg. 372, ln. 10 through pg. 328, ln. 3.

⁹ See 30 TEX. ADMIN. CODE Chapter 291.

¹⁰ "Return on Invested Capital. The return on invested capital is the rate of return times invested capital. See 30 TEX. ADMIN. CODE § 291.31 (c).

¹¹ "Components of Cost of Service. Rates are based upon a utility's cost of rendering service. The two components of cost of service are allowable expenses and return on invested capital. 30 TEX. ADMIN. CODE § 291.31 (a)

the real debt and has the capital, Aqua Texas, the Applicant, cannot have a revenue requirement providing a basis to recover, much less increase, its rates.¹²

The ALJs inaccurately contend that the language which requires an STM Application mirrors the provision requiring stock acquisition.¹³ A “stock acquisition application” does not require notice to its customers, while the STM Application does. Aqua Texas provided no notice to their customers regarding this transaction. Notwithstanding the ALJ’s contention that the Commission has been granted authority by the Legislature to interpret applicable environmental laws,¹⁴ the Commission cannot allow the filing of a “stock transfer application” to substitute for the mandatory statutory requirement of filing an STM Application.¹⁵

Like Aqua Texas, Aqua America did not file an STM. Aqua Texas only filed for a “name change” on January 12, 2006. A name change, however, is not a legal substitute for filing, and obtaining approval of, an STM.¹⁶ Because neither Aqua Texas nor its parent entity followed the law, the application should be dismissed. The Commission lacks jurisdiction to consider the application.

B. Exceptions to the ALJs’ “V. Consolidated Tariffs/Regionalization.”

1. Exceptions to the ALJs’ Argument Regarding Legislative Preference for Regionalization.

¹²*Texas Water Commission v. Lakeshore Utility Company, Inc.*, 877 S.W. 2d 819 (Tex. App.-Austin, 1994) states that Lakeshore did not demonstrate how the loan proceeds contributed to the systems that provided services to the Point LaVista and Esquire Estate II water subdivision, from which Lakeshore sought a rate increase. Lakeshore merely presented testimony that the loan proceeds were used to cover shortfalls in the utility’s operating revenues. Without knowing how the loan proceeds were spent, the Commission could not properly determine that the loan payments were reasonable and necessary for Lakeshore’s provision of service to these customers.

¹³ PFD, pg. 12.

¹⁴ PFD, pg. 11.

¹⁵ Texas Water Code § 13.301; *cf.* 30 TAC 291.109.

¹⁶ *Id.*

The ALJs erroneously ignore the plain meaning of Section 13.145 and apply the unambiguous requirements of the statute on a prospective basis to find that Aqua Texas complied with Section 13.145.¹⁷

Section 13.145. MULTIPLE SYSTEMS CONSOLIDATED UNDER TARIFF.
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. (Emphasis added.)

While regionalization may be preferred by the Legislature, and beneficial to customers; the “end” does not justify the “means” to get there. The PFD effectively “legislates” a result by ignoring the plain language of the legislation. Aqua Texas “regionalized” by consolidating its system based on geography alone, not on whether the systems were substantially similar as mandated by Section 13.145 requiring the similarity of facilities, quality of service and cost of service.¹⁸

The ALJs erred in agreeing with the ED’s conclusion that because the regions in the case were already approved by a Commission Final Order in the settlement of the 2000 Aqua Source rate case,¹⁹ the 269 systems already consolidated should be exempt from any additional analysis under Section 13.145.²⁰ This conclusion is flawed for two reasons: (1) Section 13.145 did not exist at the time of the settlement in the Aqua Source rate case; and 2) the Commission’s order adopting the settlement in the Aqua Source case is “no evidence” that the “settled systems” were grouped based on the subsequently enacted standards in Section 13.145.

¹⁷ PFD, pg. 13.

¹⁸ PFD, pg. 17.

¹⁹ Despite the “similarity” of the names, *i.e.*, “Aqua Source”, “Aqua America” and “Aqua Texas,” there is no dispute that “Aqua Source” is completely unrelated and unaffiliated with both “Aqua America” and “Aqua Texas.”

²⁰ ALJs’ PFD, pg. 21.

Accordingly, the ALJ's are wrong when they conclude that the Commission has already approved a consolidated tariff compliant with Section 13.145.

In addition to the fact that the ALJ's premise is flawed, the evidence of record demonstrates that the systems are not "substantially similar." Specifically, systems are dissimilar in that they are: (1) some water is delivered and some water is pumped, (2) systems are of varying size, age and quality, (3) some systems use surface water and others use groundwater, (4) systems are governed by a wide range of local regulatory authorities, each with their own pass-through costs, (5) one-third of the systems are subject to the Commission Compliance Orders while others require little or no investment, and (6) numerous other systems within the regions have settled this matter making them dissimilar to those who have not.²¹

Although the ALJ's contend in the PFD that the Order incorporating the Settlement from the Commission does not establish whether ASU will file future rate cases based on a system-wide, regional or system-specific rate, or a combination of system-wide, regional-specific rate, and that the Order does not preclude a regulatory authority from establishing rates in future cases based upon system-wide rates, regional rates, or system-specific rates, or a combination thereof.²² Assuming the same to be true, it is no evidence that Aqua Texas has complied with Section 13.145 in this case. Nowhere in the Aqua Source Order did the Commission rule or determine that the requirements of Section 13.145 were met for purposes of this case. Moreover, the Commission neither adjudicated nor determined in the prior Aqua Source Order that the systems being "grouped" together for purposes of that settlement agreement were substantially similar. It was a settlement that all the parties affected agreed to at the time.

²¹ See PFD, pg. 19.

²² PFD, pg. 21.

The ALJs state that “the Commission need not re-weigh the merits of consolidation of those same systems under a single tariff;” however, in the Aqua Source settlement, the Commission never “weighed in” on this issue. Instead, the Commission signed an Order stating that a settlement agreement was reached with the parties, which did not include Aqua Texas; the Commission was silent on whether the systems were substantially similar.

Section 13.145 states that in order to consolidate the systems *must be substantially similar*. The evidence of record does not support the conclusion that the systems “are” similar. The ALJ’s propose to change the law and allow the systems to “become” similar in the future.

Based upon the ALJ’s rationale, every utility system in the state, without exception, could be consolidated into a single state-wide “regional tariff,” notwithstanding the clear requirements of Section 13.145 on the theory that in the future they could become substantially similar. The Commission, as a creature of the Legislature, “can exercise no authority that the Legislature has not clearly granted.”²³ The Legislature has not granted the Commission the authority to ignore Section 13.145 of the Texas Water Code. The ALJs err in ignoring law.

Texas Water Code Section 13.002 and TEXAS ADMIN. CODE, Section 291.31(b) do not provide for rate increases based on future or prospective budgeted adjustments. Contrary to the law, however, the ALJs have agreed with Aqua Texas that a prospective adjustment, and therefore rate increase, should facilitate regionalization. That is contrary to the law, and unsupported by the record.

2. Exceptions to ALJs’ “The Broad Grounds for Substantial Similarity”

Having accepted the 269 systems within the existing Aqua Source Regions to be substantially similar, the ALJs must then find that the other systems added to these regions have

²³ *Plains Lames R.R., Ltd. v. High Plains Underground Water Conservation Dist. No. 1*, 52 S.W.3d 770,776 (Tex. App.-Amarillo 2001, not pet.) (citing *Tri-City Fresh Water Supply Dist. No. 2 v. Mann*, 142 S.W.2d 945, 948 (Tex. 1940)).

substantial similarity to the previous ones. The Judges ignore the dissimilarities between the systems.

a. **System facilities within the “regions” are not substantially similar.**

The facilities of the multiple disassociated utility systems within each region are not “substantially similar.” The record establishes that the systems are not similar in size,²⁴ in water sources or raw water quality,²⁵ in energy costs, i.e., electric rates,²⁶ operation costs,²⁷ maintenance costs, leak/repair histories,²⁸ capital improvement projects,²⁹ treatment systems,³⁰ or in construction.³¹ Some of the systems within the regions rely on water purchased from third parties, and others do not.³² The facilities within one region have different disposal methods for wastewater,³³ which also affects the cost of the individual systems.³⁴ There are very dissimilar residential systems as well as industrial systems which have been “consolidated” within the same regions and in the same proposed regional tariff in both in the Southeast and the Southwest regions.³⁵ This grouping is clearly arbitrary and not supportable under Section 13.145. The systems within each of the two regions respectively are also dissimilar in that they are also of varying ages and “states of disrepair,” factors which impact both (i) operation and maintenance costs, and (ii) capital replacement and improvement costs for the individual affected systems.³⁶

²⁴ See Hugus testimony pg. 69, ln. 19 through pg. 70, ln. 9; See Laughman testimony pg. 242, lns.1-20; See Loy testimony pg. 317, lns. 17-21)

²⁵ Hugus, pg. 73, lns.12-18.

²⁶ Hugus, pg. 781, lns.19-20.

²⁷ Hugus, pg. 69, lns.19-25 through pg. 70, lns.1-9.

²⁸ Hugus, pg. 68, ln. 20-25 through pg. 69, ln. 1; see also Laughman testimony, pg. 187, ln. 7-21.

²⁹ See Hugus testimony, pg. 70, lns.6-25 through pg. 71, lns.1-13.

³⁰ See Hugus, pg. 72, ln. 15 through pg. 73, ln. 8.

³¹ See Laughman testimony, pg. 186, ln. 20 through pg. 187, ln. 6.

³² See Hugus testimony, pg. 71, lns.13-25 through pg. 72, lns.1-14.

³³ See Hugus testimony, pg. 72, lns.15-25 through pg. 73, lines 1-11.

³⁴ See Hugus testimony, pg. 73, lns. 9-11.

³⁵ See Hugus testimony pg. 84, ln. 21 through pg. 85, ln. 11.

³⁶ See Laughman testimony, pg. 186, lns. 10-19; see also Laughman testimony, pg. 195, ln. 19 through pg. 196,

b. Existing Water Systems v. Developed Water Systems

Aqua Utilities, Inc. ("AU") is certificated under Certificate of Convenience and Necessity (CCN) No. 11157 and 20453. Aqua Source Development Company ("ADC") is certificated under CCN No. 12902 and 20867.³⁷ AU was created for the purchase of existing water and wastewater systems. ADC was created for the development of new water and wastewater systems for new subdivisions.³⁸

The ADC systems were developed from the "ground up," and done for the most part in phases, most of which are still well within the initial phases of development.³⁹ The CCN Nos. 12902 and 20867 were granted in 2000.⁴⁰ A list of the new systems acquired by ADC, as presented in Aqua Texas' application for stock transfer, is identified in Exhibit VRH-2A to Dr. Harkins' prefiled testimony. Mr. Hugus and Mr. Loy testified that "system age" is a consideration in evaluating purchase cost.⁴¹ In contrast, AU was created for the purpose of acquiring existing systems of various ages and in varying states of disrepair.⁴² The list of the older AU systems presented by Aqua Texas in their application for stock transfer is shown in Exhibit VRH-2B to Dr. Harkins' prefiled testimony.

The costs for the new systems within the proposed regions are substantially different than the older systems. These cost variations are based upon factors such as (i) developer contributions, (ii) age of systems, (iii) number of system connections (in phases), and (iv) cost of

ln. 6.

³⁷ AU and ADC have not filed an STM, nor has the Commission approved an STM as mandated by Section 13.301 and 30 TAC § 291.109. These CCN numbers account for the systems before the "name change."

³⁸ See Aqua Texas' response to the City of Woodcreek, included in Motion for Summary Disposition by SW Region.

³⁹ See Gebhard prefiled testimony, pg. 8, ln. 2.

⁴⁰ See Gebhard prefiled testimony, pg. 21, ln. 13.

⁴¹ See Hugus testimony, pg. 69, ln. 3; see Loy testimony, pg. 321, ln. 1-4 and pg. 349, ln. 6-15.

⁴² See Blackhurst prefiled testimony, pg. 8, ln. 18.

purchase for existing systems.⁴³ Mr. Hugus testified that the costs for ADC are different due to the originally funded developer contributions.⁴⁴ Important also is the distinction in Commission rules that new developer-contributed facilities do *not* earn a rate return, whereas the older systems that were utility-funded are entitled to earn a return, when approved by the Commission.⁴⁵

c. **Basic Water System Structure is not Substantially Similar**

“Substantially similar” criteria must be analyzed, in part, based on the basics of water systems.⁴⁶ For example, the source of water (e.g., groundwater, surface water, potable water from a third-party) for each system can make a significant difference in the cost and protocols (procedures) of operating the system.⁴⁷ Production and treatment costs for these different water supply sources affect both a system’s operating costs, as well as the type of facilities required by the respective systems.⁴⁸

Another basic difference includes those systems which are “distribution only” systems. Distribution only systems do *not* treat their water. Instead, they purchase potable water for distribution by the utility system.⁴⁹ Accordingly, facilities and costs of service are dissimilar to other systems they have been “geographically regionalized” with in this case.

⁴³ See Harkins prefiled testimony, pg. 15, lns. 5-8.

⁴⁴ See Hugus testimony, pg. 26, ln. 7.

⁴⁵ See Hugus testimony, pg. 99, ln. 25 to pg. 26, ln. 15.

⁴⁶ See Harkins prefiled testimony, pg. 15, lns. 15-16.

⁴⁷ See Harkins prefiled testimony, pg. 15, lns. 16-17.

⁴⁸ See Harkins prefiled testimony, pg. 15, ln. 19 through pg. 16, ln. 2.

⁴⁹ See Harkins prefiled testimony, pg. 16, lns. 4-6; see Waldock prefiled testimony, pg. 11, ln. 12; see VRH-4.

Other dissimilarities exist between large “estate” type subdivisions with usage more than double that of mobile home park subdivisions and even some medium sized residential subdivisions.⁵⁰

The number of connections in a system vastly affects the costs of the system and, therefore, creates patent dissimilarities.⁵¹ Mr. Steve Blackhurst, an Aqua Texas employee, testified that larger systems, *i.e.*, systems with more connections, have a larger customer base over which to spread the costs of repairs, etc.⁵² Within the regions proposed for a single consolidated tariff, however, some of the AquaTexas systems have no customers (Chisholm Springs), some less than 30 customers (Spanish Oak Estates, Real Oaks, etc.) and many have greater than 500 customers (Woodcreek Phase I, Woodcreek Phase II, Round Mountain Oaks, Eagle Creek, etc.).⁵³ Based upon Mr. Blackhurst’s testimony and other evidence of record, the costs per customer for these systems vary greatly based on the size of the system.⁵⁴

d. Various Regulatory Authorities Not Substantially Similar

Multiple regulatory authorities, e.g., municipalities, subsidence districts, groundwater conservation districts and/or river authorities, regulate systems within the respective single tariff regions, which also cause them to be substantially dissimilar⁵⁵ to other systems with the same proposed region.⁵⁶ The respective Districts impose fees and charges to the respective affected systems, which are not uniformly charged to, or collected from, other Aqua Texas utility systems within the same “single-tariff” region. While Aqua Texas filed a pass-through application with

⁵⁰ See Harkins prefiled testimony, pg. 17, lns. 9-11; see generally Harkins prefiled testimony, pg. 16; see also Hugus Testimony, pg. 62, ln. 5 to pg. 17; see also Loy Testimony, pg. 357, lns. 4-14; see also Gebhard Testimony, pg. 382, ln. 19 to pg. 383, ln. 3.

⁵¹ See Harkins prefiled testimony, pg. 18, lns. 4-5.

⁵² See Blackhurst prefiled testimony, pg. 27, ln. 13 through pg. 29, ln. 8.

⁵³ See Harkins prefiled testimony, pg. 18, lns. 8-12.

⁵⁴ See Gebhard testimony, Pg. 17, Ln. 8; see also Hugus testimony, pg. 64, lns. 19 -24.

⁵⁵ See Harkins prefiled testimony, pg. 19, lns. 16-19.

⁵⁶ See Harkins prefiled testimony, pg. 19, ln. 14 through pg. 20, ln. 2.

the TCEQ in May 2003 to address the additional costs imposed by some of these regulatory authorities,⁵⁷ the “pass-through” costs to the affected systems are *not* substantially similar to any other system. Instead, they reflect unique costs related to the location-related aspects of the pass-through systems.⁵⁸

3. Exceptions to ALJ’s Conclusions Regarding “Known and Measurable Changes”

The ALJ’s erred in concluding that the use of “budgeted numbers” was more reliable and/or appropriate that using “Actual expenses” as a base for evaluating “known and measurable changes.” In 2005, the Commission addressed this issue in the application of WaterCo., Inc. to change water rates in Trinity and Walker Counties, Texas.⁵⁹ An issue presented to Judge Rogan in the WaterCo. case was “May the calculation of allowable expenses under 30 TEX. ADMIN. CODE §291.31 (b) take into account known and measurable changes that were not reflected in the initial application to increase rates?” (emphasis added)

Judge Rogan opined that the “clearest and most basic legal provision governing this aspect of the state’s regulatory scheme for rate making is 30 TEX. ADMIN. CODE §291.31 (b), which states,

“Allowable expenses. Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses. In computing a utility’s allowable expenses, only the utility’s historical test year expenses as adjusted for known and measurable changes may be considered.” (Emphasis added.)⁶⁰

⁵⁷ See Laughman prefiled testimony, pg. 33, ln. 14, *see generally* VRH-5.

⁵⁸ See Hugus testimony, pg. 79, lns. 2-21.

⁵⁹ SOAH Docket No. 582-04-6443 was filed with the Commission on November 21, 2003. The hearing on the merits was held on June 15, 2005 and the PFD was filed on September 27, 2005. WaterCo., Inc., is an investor--owned utility providing retail water service in Trinity and Walker Counties, PFD and Order from The Application of WaterCo., Inc. to change water rates in Trinity and Walker Counties, Texas, SOAH Docket No. 582-04-6463 is attached hereto as Appendix D.

⁶⁰ See Water Co. PFD, pg. 3.

Section 291.3(48) defines "test year" in language virtually identical to the underlying statutory provision in TEX. WATER CODE 13.002(22) - as follows:

The most recent 12-month period for which representative operating data for a retail public utility is available. A utility rate filing must be based on a test year that ended less than 12 months before the date on which the utility made the rate filing.⁶¹

According to Judge Rogan's PFD, adopted by the Commission, the "Commission rules clearly require that a proposed rate change be framed, primarily, in terms of expenses and circumstances during the period immediately *preceding* the date on which the application for proposed change was filed."⁶² Mr. Hugus testified that Aqua Texas did *not* base their rate increase on a full test year.⁶³ Accordingly, the evidence of record supports a conclusion contrary to the ALJ's recommendation in the PFD.

4. Exceptions to ALJs' "Specific Evidence of Cost of Service Similarity."

Aqua Texas did not perform a cost of service study on even a percentage of the systems in each region, they simply provided a cost of service for the region as a whole. By not performing a cost of service study on even a sampling of the systems within each proposed "single tariff" region the Applicant failed to even attempt to comply with the unambiguous standards set forth in Section 13.145.

The ALJs rationalized allowing Aqua Texas to ignore the law because they believe that a current "snapshot in time" is not a correct way to view the rate increase application. The ALJs ignore the plain meaning of Sections 13.002 and 13.145, TEXAS WATER CODE and Section 291.31(b) (30 TAC). Applying that logic, Section 13.145 becomes moot. All systems are

⁶¹ See also Water Co. PFD, pg. 3.

⁶² See Water Co. PFD, pgs. 3-4.

⁶³ See Hugus testimony, pg. 103, ln. 16 through pg. 105, ln. 4.

substantially similar state-wide and there is no reason to have Section 13.145 requiring the systems be substantially similar as a prerequisite to consolidation.

The ALJs admit that one-third of Aqua Texas systems are under compliance orders and that they are not, therefore, substantially similar. They rationalize that “once those systems meet Commission’s minimum standards they will be substantially similar to other systems within that region.”⁶⁴ The ALJ’s analysis assumes Section 13.145, despite the fact that the statute clearly states that 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. . . (Emphasis added.) This Section 13.145 does not contemplate systems “becoming” substantially similar. As the ALJs admit, the quality of service is *not* substantially similar at this time, however, to reach their conclusion they they ignore the law and rationalize that there is a “tension” in attempting to discern what the Legislature means by indicating quality of service is one of the elements to review in the substantial similarity analysis. Assuming that tension truly exists, the Commission should wait for clarification by the Legislature as opposed to rewriting new law to ignore the requirement that quality of service must be substantially similar among the systems to consolidate the same.

5. **Exceptions to “The Consolidated Tariffs Promote Water Conservation.”**

Section 13.145 also requires that to consolidate systems under one tariff, the tariff must provide for rates which promote water conservation for single family residences and landscape irrigation.⁶⁵ Aqua Texas did not provide any evidence to demonstrate that the proposed rates

⁶⁴ See PFD, pg. 40.

⁶⁵ See TEX. WATER CODE §13.145 (b).

promote conservation.⁶⁶ In fact, Mr. Adhikari, the engineer for the State, testified that Aqua Texas' 0-20,000 tiered rate does *not* promote conservation of water.⁶⁷

Accordingly, the ALJs, incorrectly state that consolidated tariffs promote water conservation.

6. **Exceptions to the Conclusion on Consolidated Tariffs and Regionalization.**

The ALJs erred in stating that the SE and SW Regions proposed what would amount to a series of subregions. The ALJs comment that the SE and SW Regions failed to cite any provision of the Water Code that authorizes creation of sub-regions.⁶⁸ The SE and SW Regions propose a series of regions which comply with Section 13.145, in place of the arbitrary designation of regions proposed by Aqua Texas.

The ALJs' conclusion is inaccurate. Aqua Texas has argued that all of their main operations and maintenance are within particular areas of the State there is no reason why, from those offices, they cannot maintain different rates for five or more different regions within that area. It is not the SE and the SW Regions' burden to substantiate the various regions which Aqua Texas must form in order to comply with Section 13.145. Aqua Texas did not provide any information regarding cost of service for the systems or how much debt was allocated to each of the regions. Therefore, assuming *arguendo* that the SE and SW Regions hold the burden to divide the state for Aqua Texas, it would be impossible, as that information is not available. This lack of information underlines the difficulty of the case, which the SE and the SW Regions have been discussing with Aqua Texas since this case began in 2002.

⁶⁶ See Freitag testimony, pg. 410, lns. 18-24.

⁶⁷ See Adhikari testimony, pg. 882, lns. 1-3. Ingram does not have a tiered rate. See also Adhikari testimony, pg. 872, lns. 17-21.

⁶⁸ PFD, pg. 44.

The ALJs cite Mr. Blackhurst's testimony,⁶⁹ which states that while he was at TNRCC and involved in developing the regionalization policy, the TNRCC was hoping that Aqua Source, now Aqua Texas, would do exactly what it did regarding regionalization. However, Mr. Blackhurst does not work for the TCEQ and Section 13.145 was not enacted when Mr. Blackhurst worked for the TNRCC. The ALJs erred basing their decision on testimony contrary to the unambiguous language of section 13.145.

C. Exceptions to ALJs VI. "Adjustments for Settled Customers."

The ALJs argue that there should not be any adjustments made in this rate case for settled customers because "the ED's approach cuts against the regionalization that is at the heart of this case and that offers customer benefits sought by Aqua Texas. Essentially, the ED's approach would result in a number of different rate setting approaches for different customer groups."⁷⁰ Although the ALJs contend that settlement agreements have not been admitted as evidence in this case, Dr. Victoria Harkins provided settlement information in her prefiled testimony.⁷¹ The settlement information provided in prefiled testimony clearly shows that Aqua Texas has already determined that different protesting parties have settled for different rates than were applied for in this rate application. Accordingly, Aqua Texas defeated its own argument that each of the systems are substantially similar and should be regionalized. The Applications in this case were based on numerous parties, many which have settled. It is not just and reasonable for customers to bear the costs associated with settled parties.⁷²

D. Exceptions to ALJs' V. "Expense Disallowances."

⁶⁹ PFD, pg. 45.

⁷⁰ PFD, pg. 46.

⁷¹ See Harkins prefiled testimony, pg. 20, ln. 4 to pg. 21, lns. 1-10.

⁷² See Appendix F

Aqua Texas did not correctly allocate the cost of service for each region and prove adequate revenue requirements. As noted earlier, Aqua Texas did not conduct any cost of service study for any region, much less individual systems. Accordingly, Aqua Texas cannot prove an adequate revenue requirement. Specifically, when questioned about what part of the debt was apportioned to each region, no specific numbers could be given although, each region varies in numbers of customers and numbers and types of utility systems.⁷³ Moreover, no evidence was presented to establish the specific amounts paid for the systems that were Aqua Development Company Systems, which were paid for by the respective Developers, versus the Aqua Utilities systems, that were older systems which may or may not have needed upgrades/replacements etc.⁷⁴

In *Texas Water Commission v. Lakeshore Utility Company, Inc.*, *supra*,⁷⁵ Lakeshore Utility Company filed an application with the Commission seeking a rate increase for its water and sewer services.⁷⁶ The Commission in large part denied Lakeshore's application. The district court reversed the Commission's order and remanded the case to the Commission.⁷⁷

The Court of Appeals held that "...the burden was on Lakeshore to prove that the interest expense was reasonable and necessary."⁷⁸ The Court, as had the Commission, concluded that Lakeshore failed to carry this burden because Lakeshore did not demonstrate how the loan proceeds contributed to the systems that provided services to the Point LaVista and Esquire Estate II water subdivisions.⁷⁹ Lakeshore merely presented testimony that the loan proceeds were used to cover shortfalls in the utility's operating revenues.

⁷³ See Loy, pg. 327, ln. 10 through pg. 328, ln. 3.

⁷⁴ See Hugus testimony, pg. 48, ln. 9 through pg. 49, ln. 2.

⁷⁵ *Texas Water Commission v. Lakeshore Utility Company, Inc.*, 877 S.W. 2d 814 (Tex. App.—Austin 1994).

⁷⁶ See *Lakeshore* 817.

⁷⁷ *Id.*

⁷⁸ See *Lakeshore* at 819.

⁷⁹ See *Lakeshore* at 819.

The absence of evidence of record related to its debt and the cost of service in this case is analogous to the interest payments in Lakeshore. Specifically, Aqua Texas has *not* proven the amount of debt which has been allocated to each region, much less each subdivision or utility within each region. Aqua Texas' "unproven" debt is approximately 80 million dollars.⁸⁰ As in *Lakeshore*, the Commission cannot determine if the debt allocation is reasonable and necessary because the record does not establish where the money is allocated. Moreover, Aqua Texas has not proven the cost of service to each system in the region.⁸¹

In *Lakeshore*, the utility also failed to prove the value of the facilities that qualified as invested capital because the Commission did not find any information in Lakeshore's application or the Administrative Record which demonstrated that a lease existed, that payments were made to Sentry for the use of the facilities, or regarding the reasonable value of a hypothetical lease between Lakeshore and Sentry.⁸² Aqua Texas similarly has failed to prove the existence of its capital structure, or allocated capital structure. Aqua Texas has not provided any lease, contract, or information which shows who owns what assets other than the testimony that the capital and debt all belong to Aqua America. It is impossible to calculate a correct rate of return when we cannot determine the capital structure of Aqua Texas. Accordingly, the Commission cannot determine if the cost of service is just and reasonable because the record does not establish how the money is allocated.

E. Exceptions to ALJs' VIII. "Rate Base Issues."

⁸⁰ See Loy testimony, pg. 327, ln 10 through pg. 328 ln 3.

⁸¹ See Hugus testimony, pg. 65, lns. 4-10; see Laughman testimony, pg. 8, lns. 2-6; see Loy testimony, pg. 314, lns. 10-20; see Waldock testimony, pg. 499, lns. 8-25.

⁸² Lakeshore at 822.

The Commission's rules expressly place the burden of proof in this proceeding on the Applicant, Aqua Texas.⁸³ The burden was on Aqua Texas to present a rate design (i) in the Application; and (ii) in the hearing. The vague and uncertain evidence presented during the hearing process keeps Aqua Texas from meeting their burden in this case. The TCEQ Application obligates Aqua Texas to provide a rate design in Section IX. Accordingly, rate design should be found in Aqua Texas' Application, Section IX. "Rate Design." Aqua Texas' Application states that this information is found in Attachment 14.⁸⁴ However, as previously briefed, Aqua Texas acknowledged on numerous occasions that a "Rate Design" was not provided in the Application.⁸⁵

Aqua Texas did not follow the TCEQ rules.⁸⁶ Neither staff, OPIC nor the SE and SW Regions could figure out the proper rate structure.

Aqua Texas has failed to meet its burden.

1. **Exceptions to ALJs' XIII D. "Protestants' Rate Base Adjustments."**

Mr. Adhikari testified for the ED to numerous schedules during his testimony. He stated that he did not know whether assets were added or replaced, used and useful, duplicative, or even what exactly certain assets included.⁸⁷ Mr. Adhikari, testified that he failed to (i) review inspection reports, (ii) request Compliance Inspections for systems over a year old, (iii) failed to call the enforcement coordinator for their opinion on Aqua Texas' response to the compliance agreements, (iv) failed to take out, and (v) failed to call system personnel regarding the systems

⁸³ See 30 TEX. ADMIN. CODE § 291.12 (burden of proof is on retail utility to establish that the proposed rates will be "just and reasonable."); cf. 30 TEX. ADMIN. CODE § 80.17(b) (prescribing that 30 TEX. ADMIN. CODE § 291.12 governs burden of proof in retail rate proceedings).

⁸⁴ See AT-1.

⁸⁵ See Hugus testimony, pg. 51, lns. 1-21; Scheibelhut testimony, p. 297, ln. 22 to pg. 299, ln. 5.

⁸⁶ 30 TEX. ADMIN. CODE § 291.22 states that "In order to change rates, which are subject to the Commission's original jurisdiction, the applicant utility shall file with the Commission an original *completed* application for rate change . . ." (Emphasis added).

⁸⁷ See Appendix E, Adhikari testimony pg. 859-957, specifically referring to pgs. 881-885.

which the TCEQ did not visit to verify the assets.⁸⁸ As stated previously, Mr. Adhikari's review consisted only of the new systems and the large systems in his audit and his determination that the systems in the regions were "substantially similar".⁸⁹ The ALJs acknowledge that even under the most conservative numbers, Mr. Adhikari stated that he was approximately 90 percent confident that all the items are used and useful.⁹⁰ However, it is important to note that Aqua Texas is requesting a rate base of approximately 114 million and even if Mr. Adhikari was 10% inaccurate, that still leaves an 11.4 million dollar discrepancy. It is impossible for the TCEQ to assure rates, operations and services are just and reasonable to the consumer if these audits are not performed. The rates allowed must be *just and reasonable* as stated in Section 13.182. These are not simply mistakes; they represent a failure of the ED to properly evaluate the application. Although there were 335 systems, as the Judges correctly pointed out, it does not absolve the Executive Director's staff from verifying whether assets were used and useful.⁹¹

F. Exceptions to ALJs' Rationale Regarding Rate of Return.

The ALJs state that the protestants argue that the Commission should simply use a 6.8 percent benchmark from Moody's BAA Utility Bond Yield as the rate of return. This is correct. The rate of return requested in this case is 12%, with a weighted average 8.44% rate of return based upon a hypothetical 50% equity and 50% debt capital structure.⁹² Mr. Hugus confirmed that Aqua Texas has no debt and no equity of its own and that the proposed 50/50 capital structure is hypothetical.⁹³ The Executive Director has recommended allowing the requested rate of return, in spite of the fact that no rate of return worksheet was produced to support the 12%.⁹⁴

⁸⁸ See Appendix E, Adhikari testimony pg.859-957, specifically referring to pgs. 897, 898.

⁸⁹ See Appendix E, Adhikari testimony pg.859-957, specifically referring to pg. 866.

⁹⁰ See Appendix E, Adhikari testimony pg.859-957, specifically referring to pg. 898.

⁹¹ See Appendix D

⁹² See AT-1, Attachment 10; see also Loy prefiled testimony, pg. 181, lns. 10-14.

⁹³ Hugus testimony, pg. 97, ln. 24 through pg. 98, ln. 9.

⁹⁴ See Hugus testimony, pg. 93, ln. 2 through pg. 98, ln. 9.

(The rate of return calculations are required by the TCEQ's "Application for a Rate/Tariff Change" and is identified in the instructions as Table IV. D.)⁹⁵

Additionally, the Executive Director's reliance upon a 12% rate of return evidences the existence of a "practice" that rises to the level of constituting a "rule" or "policy" adopted by the Executive Director's staff regarding appropriate rates of return without undertaking a proper rule-making. Such a "rule" or "policy" clearly violates the requirements of the Administrative Procedures Act⁹⁶ as no such rule or "policy" has been lawfully promulgated, noticed or adopted. To treat the Executive Director's use of the 12% rate of return as anything but a "rule" or "policy" renders the decision to use the same, based upon the evidence of record an ad hoc, arbitrary and unsupported decision by the Executive Director which should have been disregarded by the ALJs, and should not be accepted by the Commission.

Moreover, the recommendation of a 12% rate of return should not be allowed based on several factors; first, Aqua Texas, as a wholly-owned subsidiary, has no debt and no equity other than that arbitrarily assigned by the parent company Aqua America,⁹⁷ and second, that the yield of the stated benchmark Moody's BAA Utility Bond Yield for 2003 was actually only 6.8%.⁹⁸ Ms. Pascua, in her prefiled testimony stated, "I propose a 12 percent (ROR) based on Moody's

⁹⁵ See AT-1.

⁹⁶ TEX. GOV'T CODE Ch. 2001. TEX. GOV'T CODE § 2001.004 states in part: that "a state agency shall (1) adopt rules of practice stating the nature and requirements of all available formal and informal procedures; (2) index, cross-index to statute, and make available for public inspection all rules and other written statements of policy or interpretations that are prepared, adopted or used by the agency in discharging its functions. . ."; TEX. GOV'T CODE § 2001.005 states "RULE, ORDER, OR DECISION NOT EFFECTIVE UNTIL INDEXED. (a) A state agency rule, order, or decision made or issued on or after January 1, 1976, is not valid or effective against a person or party, and may not be invoked by an agency, until the agency has indexed the rule, order, or decision and made it available for public inspection as required by this chapter. (b) This section does not apply in favor of a person or party that has actual knowledge of the rule, order, or decision."

⁹⁷ See Hugus testimony, pg. 93, ln. 2 through pg. 98, ln. 9.

⁹⁸ See <http://www.bondmarkets.com/story.asp?id=86>; see TEX. GOV'T CODE § 2001.090 regarding "official notice."; see also www.main.gov/mpuc/orders/2003/2003-793aios.pdf which provides that the Moddy's Baa Utility yield is approximately 6.71%.

BAA Public Utility Bond average for 12 months during the test year, plus a risk factor.”⁹⁹ Ms. Pascua also stated, “The return must be fair and reasonable, and should be consistent with the returns available from other investments of similar risk.”¹⁰⁰

With an actual yield of only 6.8% on the benchmark rates used to establish the base rate of return, recommending a total rate of return of 12% assumes that Aqua Texas needs an additional 5.20% return as a “risk” premium. A “risk” premium of almost 93.54% over benchmark rates is neither fair nor reasonable in this case.

Adding a risk premium of 2 – 3% for a small company that has limited resources and financial backing may be justified, however, Aqua America is the largest publicly traded water and wastewater utility company in the U.S.¹⁰¹ As such, they enjoy a net profit margin in excess of 17.25% based on a net income of \$92 million dollars and have significant resources, both financial and operational, to address any potential risks or threats to their continued high profitability.¹⁰²

G. Exceptions to the ALJs X. “Rate Case Expenses.”

There is no credible evidence that the invoices which Aqua Texas has paid have been reasonable or justified. Aqua Texas submitted a “summary” of all of their invoices totaling \$2,734,778.65.¹⁰³ Mr. Scheibelhut testified that he did not have actual knowledge of the work performed, he merely coded the invoices as “rate case expenses.”¹⁰⁴ Actual invoices were not submitted for the costs which occurred after September of 2006.

⁹⁹ See also Pascua testimony, pg. 783, lns. 6-7.

¹⁰⁰ Pascua prefiled, pg. 20, lns. 6-7.

¹⁰¹ See www.aquaamerica.com.

¹⁰² See www.finance.yahoo.com/q/ks?s=WTR/ (Key Statistics)

¹⁰³ AT-85.

¹⁰⁴ See Scheibelhut testimony, pg. 1115, ln. 15 through pg. 1116, ln. 2.

Andy Barrett did not testify. Mr. Scheibelhut testified that he could only testify as to whether the expenses occurred and whether it was received by an appropriate person.¹⁰⁵ There was no justification or explanation of his fees. Any other testimony regarding Andy Barrett's invoices should be considered hearsay, because Mr. Scheibelhut lacks knowledge of Mr. Barrett's legal, consulting, and legislative work.

Similarly, no one testified from Northpoint Consulting, Manley Consultants, Vonis Communications, American Productivity, IKON Office Solutions, Lloyd Gosselink, Kennedy Reporting Service, RLS Legal Solutions, Affiliated Reporters, National Legal, City of Woodcreek, City of Ingram, City of Houston, United Parcel Service, Enterprise Rent-A-Car, Pro Staff, ECI Conference Call, Convenience Office Supplies, Federal Express, Star-Telegram Operations, Severn Trent, LK Jordan & Associates, Blast!Express, Inc., Mercury Communications, Capital Printing Corp., Hotline-Terra and Minuteman Press. There was no justification or explanation of their fees. Accordingly, any testimony regarding Invoices from these vendors should be considered hearsay, because the individual who testified lacks knowledge of the billing practices and duties of these vendors.

Mathias Jost, Peter Marek, Ruth Carlson, Mark Zeppa, Catherine Webking, Darryl Waldock, Mary Ann Herring, Nola Farris and/or Cathy Ramos did not testify. There was no justification or explanation of their fees. Any other testimony regarding Invoices of these consultants should be considered hearsay, because the individual who testified lacks knowledge of either their billing practices and/or work product.

After Aqua Texas had its Application returned by the TCEQ they had GDS rework their Application.¹⁰⁶ As mentioned previously, an application without a rate design, missing

¹⁰⁵ See Scheibelhut testimony, pg. 1103, lns. 4-11.

¹⁰⁶ See Loy testimony, pg. 303, ln. 12. See also Loy testimony, p. 340, pg. 340, lns. 19-33.

information and a supposed “re-classification” from the ground-up, “pebble-by-pebble,” after the filing of the Application is hardly prepared to go to hearing on the missing data.¹⁰⁷ GDS did approximately one million dollars worth of work to “redo” an application that Aqua Texas should have had correct to begin with. The customers should not be punished for Aqua Texas’ negligence in researching how they must fill out a rate application. The Commission should disregard the ALJ’s unsupported recommendation and deny recovery of Aqua Texas’ claimed expenses.

III. FINDINGS OF FACT AND CONCLUSION OF LAW

Based upon the evidence of record, and the arguments set forth herein and in the SE and SW Regions’ previously filed recent arguments, the SE and SW Region respectfully request the Commission reject the ALJs’ Findings of Fact including numbers 25-27; 29; 33-35; 39; 41; 53; 63; 64; 70-75; and 77; and Conclusions of Law, including numbers 5; 10; 11; 12; 15-21; and 23-25; and adopt the Findings of Fact and Conclusions of Law attached hereto as Appendix “B” and enter an Order denying Aqua Texas’ Application for a change in the water and sewer tariffs and rates in various counties.

IV. CONCLUSION AND PRAYER

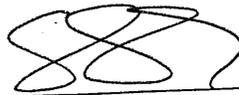
WHEREFORE, PREMISES CONSIDERED, the SE and SW Regions respectfully pray that the Commission reject the ALJ’s Proposal for Decision and (i) adopt the Findings of Fact and Conclusions of Law consistent with those attached hereto as Appendix “B” and (ii) deny Aqua Texas’ Application.

Respectfully submitted,

JACKSON, SJOBERG, MCCARTHY & WILSON L. L. P.

¹⁰⁷ See Scheibelhut testimony, pg. 1154, lns. 3-9; See also Gephart testimony, pg. 1496, ln. 2 through pg. 1497, ln. 1.

By: _____



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**Attorneys for Southeast Region Homeowners Group
(and Numerous Individual Customers, including
Crighton Ridge Homeowners Group) (the "SE Region")
and The Southwest Region (the "SW Region")**

CERTIFICATE OF SERVICE

I hereby certify, by my signature below, that a true and correct copy of the above was forwarded via Hand Delivery, Certified Mail or regular, U.S. mail, as indicated, on the 25th day of July, 2007, to those persons on the attached service list.



Sheridan L. Gilkerson

SERVICE LIST

SOAH DOCKET NOS. 582-05-2770, 582-05-2771
TCEQ DOCKET NOS. 2004-1120-UCR, 2004-1671-UCR

| Parties | REPRESENTATIVE/ADDRESS |
|--|--|
| State Office of Administrative Hearings | Craig R. Bennett, Travis Vickery Administrative Law Judges State Office of Administrative Hearings 300 West Fifteenth Street, Suite 502 Austin, TX 78701 512-475-4993 512-936-0730 fax |
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| | |
|---|---|
| <p>Southeast Region Homeowners Groups (and Numerous Individual Customers, including Crighton Ridge Homeowners Group)</p> | <p>Sheridan L. Gilkerson Attorney Jackson, Sjoberg, McCarthy & Wilson, LLP 711 W. 7th St. Austin, TX 78759 512 225-5707 512 225-5565 (Fax)</p> |
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| <p>Docket Clerk, Office of the Chief Clerk</p> | <p>Linda Lamberth 912 Eagle Creek Dr. Floresville, TX 78114 830-393-3373 210-524-8501 (Fax)</p> <p>Ms. La Donna Castanuela TCEQ, Office of the Chief Clerk 12100 Park 35 Circle Building F, 1st Floor Austin, TX 78711-3087 512-239-3311 (Fax)</p> |

* Regular Mail

APPENDICES

- Appendix A Letter from the Commission dated December 6, 2002.
- Appendix B Findings of Fact and Conclusions of Law.
- Appendix C List of Rate Case expenses that should be removed, including settled systems' expenses to be removed.
- Appendix D List of specific items and several water and sewer systems that the SE and SW Regions are requesting be removed *and* a list of systems that should be removed because they are not just normal small, residential systems.
- Appendix E Direct Testimony of Kamal Adhikari

Robert J. Huston, *Chairman*
R. E. "Ralph" Marquez, *Commissioner*
Kathleen Hartnett White, *Commissioner*
Margaret Hoffman, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 6, 2002

Ms. Celina Romero
Clark, Thomas & Winters
P. O. Box 1148
Austin, Texas 78767

Re: Applications from Philadelphia Suburban Corporation to Purchase and Transfer the Stocks of AquaSource Utility, Inc. and AquaSource Development Company, Water and Sewer Certificates of Convenience and Necessity, (CCN) Nos. 11157, 12902, 20453 and 20867, in various Counties; Application Nos. 34065-K and 34066-K.

Dear Ms. Romero:

Thank you for your letter reporting the proposed purchase of 100% of the stocks of AquaSource Utility, Inc. and AquaSource Development Company by Philadelphia Suburban Corporation. We have reviewed the information submitted pursuant to the criteria in V.T.C.A., Water Code Section 13.302 to determine if a public hearing will be scheduled on the proposed transaction. Based on that review, we have determined that a public hearing will not be requested.

The CCNs will remain in the name of AquaSource Utility, Inc. and AquaSource Development Company until a Sale, Transfer, and Merger application is submitted and approved in accordance with the TCEQ rules and regulations.

You may complete your proposed transaction as scheduled or at any time after you receive this notification. Please send copies of the completed transaction within 30 days after the completion to the Utilities and Districts Section, Water Supply Division MC 153, with a reference to Application Nos. 34065-K and 34066-K.

If you have any questions, please contact Ms. Elsie Paschua at 512/239-5367 by phone, by email at epaschua@tceq.state.tx.us, or if by correspondence include MC 153 in the letterhead address.

Sincerely,

A handwritten signature in cursive script that reads "Michelle Abrams".

Michelle Abrams, Team Leader
Utilities & Districts Section
Water Supply Division

MA/EP/ac

STATE OF TEXAS § FEB 16 2003
COUNTY OF TRAVIS §

I hereby certify that this is a true and correct copy of a Texas Commission on Environmental Quality document, which is filed in the Records of the Commission, given under my hand and the seal of office.

A handwritten signature in cursive script that reads "Robert D. Cade".
Robert D. Cade, Head, Custodian of Records
Texas Commission on Environmental Quality

cc: TCEQ Regions 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14 and 16 Offices
Casey Wren, Clark, Thomas & Winters, P.O. Box 1148, Austin, Texas 78767

P.O. Box 13087 Austin, Texas 78711-3087 512/239-1000 Internet address: www.tceq.state.tx.us

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AT 104390

APPENDIX "B"

The SE and SW Region request the ALJ's adopt the following Findings of Fact and Conclusions of Law based on evidence adduced at the Contested Case Hearing.

FINDINGS OF FACT

- 1) AquaSource Development Co. d/b/a Aqua Texas and Aqua Utilities Inc., d/b/a Aqua Texas are the applicants in this case.¹
- 2) Aqua Texas filed for a rate/tariff change May 2004.²
- 3) Aqua Texas does not have any debt to be recovered in this rate case.³
- 4) AquaAmerica has the debt and equity which Aqua Texas is claiming.⁴
- 5) Aqua Texas does not have any credit rating.⁵
- 6) Aqua Texas has no capital to be recovered in this rate case.⁶
- 7) Aqua Texas has a hypothetical 50% debt and 50% equity ratio.⁷
- 8) The \$90 million dollar debt is not actually allocated to Aqua Texas.⁸
- 9) The two components of Cost of Service are allowable expenses and return on invested capital.⁹
- 10) The return on invested capital is the rate of return times invested capital.¹⁰
- 11) Debt capital and Equity capital are included in what is determined to be the invested capital of the company.¹¹
- 12) Aqua America has the capital.¹²
- 13) Aqua America is not the Applicant.¹³

¹ See AT-1.

² *Id.*

³ See Hugus testimony, pg. 93, ln 2 through pg. 98. ln 9.

⁴ See *Id.* pg. 93, ln 2 through pg. 98. ln 9.

⁵ See *Id.* pg. 93, ln 2 through pg. 98. ln 9.

⁶ See *Id.* pg. 93, ln 2 through pg. 98. ln 9.

⁷ See *Id.* pg. 93, ln 2 through pg. 98. ln 9; See also Loy prefiled testimony, pg. 18, lns 13, 14.

⁸ See Loy testimony, pg. 372, ln 10 through pg. 328 ln. 3.

⁹ 30 TEX. ADMIN. CODE § 291.31 (a).

¹⁰ *Id.* § 291.31 (c).

¹¹ *Id.* § 291.31 (c).

¹² See Hugus testimony pg. 97 ln. 24.

- 14) Neither AquaSource Utility, Inc., Aqua America, nor any of its Aqua Texas affiliated entities filed a Sale, Transfer, Merger Application with the TCEQ.
- 15) An application to Sell, Transfer, or Merge a Retail Public Utility must be filed with the Commission and notice must be provided to each customer being transferred and each utility within 2 miles at least 120 days before.¹⁴
- 16) A transaction, regarding rate/tariff change, which has taken place since September 1, 1991, and has not been completed in accordance with Section 13.301 of the Texas Water Code including the 120-day prior notice, is void.¹⁵
- 17) Neither AquaAmerica, nor any of its Aqua Texas affiliated entities, filed the required "public notice" of the action given as prescribed by law.
- 18) "A utility filing for a change in rates under the TEX. WATER CODE, §13.187, shall be prepared to go forward at a hearing on the data which has been submitted under subsection (a) of this section and sustain the burden of proof of establishing that its proposed changes are just and reasonable."
- 19) Aqua Texas' Application is based on a 2003 test year.
- 20) Aqua Texas' Application does not have any test year "actuals" for 2003.¹⁶
- 21) Aqua Texas' Application fails to provide any basis for the adjusted change to the numbers of 2003 to 2004.¹⁷
- 22) TCEQ asked for information from Aqua Texas to complete the application.
- 23) TCEQ asked Aqua Texas for its rate design,¹⁸ however, Aqua Texas never provided it.
- 24) TCEQ requested sewer use information, and Aqua Texas did not provide it.¹⁹

¹³ See AT-1

¹⁴ TEX. WATER CODE §13.301

¹⁵ See *Id.* § 13.301 and the attached Application to Sell, Transfer, or Merge a Retail Public Utility attached as Appendix B. Section 13.301 of the TEX. WATER CODE states in part: § 13.301. REPORT OF SALE, MERGER, ETC.; INVESTIGATION; DISALLOWANCE OF TRANSACTION. (a) a utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system that is required by law to possess a certificate of public convenience and necessity or the effective date of a merger or consolidation with such a utility or water supply or sewer service corporation, shall: (1) file a written application with the commission; and (2) unless public notice is waived by the executive director for good cause shown, give public notice of the action

¹⁶ See AT-1.

¹⁷ See Hugus testimony, pg. 48, ln. 14 to pg. 58, ln. 14.

¹⁸ See Adhikari testimony pg. 866 lns. 7-11).

¹⁹ See *Id.* pg. 879, lns. 7-14.

- 25) Approximately 9.6 million dollars of assets were added during the pendency of this case.²⁰
- 26) Aqua Texas filed this application for multiple systems to be consolidated under single regional tariffs.²¹
- 27) Section 13.145 provides as follows:
- 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.
- 28) “And” does not mean “or.”²²
- 29) “Substantially” and “similar” are clear and unambiguous words. “Substantially” means “consisting of and relating to substance,” “not imaginary or illusory: real, true,” and “important, essential.”²³
- 30) “Similar” means “having characteristics in common; strictly comparable,” “alike in substance and essentials.”²⁴ This similarity must be in terms of “facilities, quality of service *and* cost of service.”²⁵ (Emphasis added).
- 31) In 1999, the predecessor of Aqua Texas, Aqua Source, Inc., separated the state into four different regions, Northeast, Northwest, Southeast and Southwest in the course of applying for a rate/tariff change. However, the settlement made clear that these geographic regions were not indicative of any finding of similarity, but were for convenience.
- 32) Paragraph 1 of Aqua Source Utilities’ 1999 Rate Order²⁶ specifically states that the settlement in this case will in no way interpret what systems will be grouped together, if any, in future rate cases.
- 33) The 1999 rate case was settled as an uncontested matter and the Executive Director of the TCEQ signed an order that was consistent with the settlement.²⁷

²⁰ AT-74; *See also* Gebhard testimony, pg. 394, lns. 11-13.

²¹ *See* AT-1.

²² Webster’s 9th New Collegiate Dictionary (1991) states: “And” is used as a function word to indicate connection or addition, especially of items within the same type or class. “Or” is used as a function word to indicate an alternative, the equivalent or substitutive character of two words or phrases. *See generally* TEX. GOV’T CODE § 311.011.

²³ Webster’s 9th New Collegiate Dictionary (1991).

²⁴ *Id.*

²⁵ *See* TEX. WATER CODE § 13.145 (1).

²⁶ *See* Attachment 3 to Harkins prefiled testimony.

²⁷ *See* Hugus Testimony, Pg. 124, Ln. 22 To Pg. 125, Ln. 13.

- 34) The facilities of the multiple disassociated utility systems within each region are not "substantially similar" in size,²⁸ water sources,²⁹ electric rates,³⁰ operation costs,³¹ maintenance costs, leak/repair histories,³² capital improvement projects,³³ treatment systems,³⁴ and construction.³⁵
- 35) Some of the systems within the regions rely on water purchased from third parties, and others do not.³⁶
- 36) The facilities within one region have different disposal methods for wastewater,³⁷ which also affects the cost of the individual systems.³⁸
- 37) There are residential systems as well as industrial systems within the same regions and the same proposed regional single tariff in both in the Southeast and the Southwest regions.³⁹
- 38) The systems within each of the regions are also of varying ages and states of disrepair, factors which impact both operation and maintenance costs, as well as capital replacement and improvement costs.⁴⁰
- 39) Aqua Utilities, Inc. ("AU") is certificated under Certificate of Convenience and Necessity (CCN) No. 11157 and 20453.
- 40) Aqua Source Development Company ("ADC") is certificated under CCN No. 12902 and 20867.⁴¹
- 41) The ADC systems were developed from the "ground up," and done for the most part in phases, most of which are still well within the initial phases of development.⁴²
- 42) A list of the new systems acquired by ADC, as presented in Aqua Texas' application for stock transfer, is identified in Exhibit VRH-2A to Dr. Harkins' prefiled testimony.

²⁸ See Hugus testimony pg. 69, ln. 19 through pg. 70, ln. 9; See Laughman testimony pg. 242, lns.1-20; See Loy testimony pg. 317, lns. 17-21)

²⁹ Hugus Testimony, pg. 73, lns.12-18.

³⁰ *Id.* pg. 781, lns.19-20.

³¹ *Id.* pg. 69, lns.19-25 through pg. 70, lns.1-9.

³² *Id.* pg. 68, ln. 20-25 through pg. 69, ln. 1; see also Laughman testimony, pg. 187, ln. 7-21.

³³ See *Id.* pg. 70, lns.6-25 through pg. 71, lns.1-13.

³⁴ See *Id.* pg. 72, ln. 15 through pg. 73, ln. 8.

³⁵ See Laughman testimony, pg. 186, ln. 20 through pg. 187, ln. 6.

³⁶ See Hugus testimony, pg. 71, lns.13-25 through pg. 72, lns.1-14.

³⁷ See *Id.* pg. 72, lns.15-25 through pg. 73, lines 1-11.

³⁸ See *Id.* pg. 73, lns. 9-11.

³⁹ See *Id.* pg. 84, ln. 21 through pg. 85, ln. 11.

⁴⁰ See Laughman testimony, pg. 186, lns. 10-19; see also Laughman testimony, pg. 195, ln. 19 through pg. 196,

ln. 6.

⁴¹ These CCN numbers account for the systems before the "name change."

⁴² See Gebhard prefiled testimony, pg. 8, ln. 2.

- 43) In contrast, AU was created for the purpose of acquiring existing systems of various ages and in varying states of disrepair.⁴³
- 44) The costs for the new systems of ADC are substantially different than those costs for the older systems owned by AU.
- 45) These cost variations are based upon factors such as developer contributions, age of systems, number of system connections (in phases), and cost of purchase for existing systems.⁴⁴
- 46) The new developer-contributed facilities of ADC do *not* earn a rate return, whereas the older systems that were utility-funded by AU are entitled to earn a return, when approved by the Commission.⁴⁵
- 47) In the 1999 Aqua Source case, the rate base was fixed by the settlement agreement involving AU (not ADC) for a test year ending December 31, 1999, by TCEQ.
- 48) The source of water for each system can make a significant difference in the cost and protocols (procedures) of operating the system.⁴⁶
- 49) Rivercrest Water and Great Oaks (TalTex) in the SW region use surface water.⁴⁷
- 50) The Estates of Shady Hollow is a groundwater-based system.⁴⁸
- 51) Production and treatment costs for these different water supply sources affect both system operating costs, as well as the type of facilities required by the respective systems.⁴⁹
- 52) Distribution only systems do *not* treat their water.
- 53) AquaTexas' Southwest Region, for example, has (i) several manufactured or mobile home subdivisions (*i.e.*, Needville Manufactured Homes, Peek Road Mobile Home Park, Mobile Home Estates, etc.), (ii) several large estate subdivisions (Estates of Shady Hollow, Kendall Pointe, etc.), and (iii) some mid-sized residential subdivisions (Woodcreek, Onion Creek, etc.).⁵⁰
- 54) The water usage in a manufactured housing subdivision and a mobile home park is less than a medium sized residential subdivision.⁵¹

⁴³ See Blackhurst prefiled testimony, pg. 8, ln. 18.

⁴⁴ See Harkins prefiled testimony, pg. 15, lns. 5-8.

⁴⁵ See Hugus testimony, pg. 99, ln. 25 to pg. 26, ln. 15.

⁴⁶ See Harkins prefiled testimony, pg. 15, lns. 16-17.

⁴⁷ See *Id.* pg. 15, lns. 17-18.

⁴⁸ See *Id.* pg. 15, lns. 16-19.

⁴⁹ See *Id.* pg. 15, ln. 19 through pg. 16, ln. 2.

⁵⁰ See *Id.* pg. 16, lns. 18-22.

⁵¹ See *Id.* pg. 16, lns. 16-23.

- 55) The usage in the various large estates subdivisions is more than double that of mobile home parks and even some medium sized residential subdivisions.⁵²
- 56) The number of connections in a system vastly affects the costs of the system.⁵³
- 57) Within the regions proposed for a single consolidated tariff, however, some of the AquaTexas systems have no customers (Chisholm Springs), some less than 30 customers (Spanish Oak Estates, Real Oaks, etc.) and many have greater than 500 customers (Woodcreek Phase I, Woodcreek Phase II, Round Mountain Oaks, Eagle Creek, etc.).⁵⁴
- 58) The costs per customer for Chisholm Springs, Spanish Oaks Estates and Woodcreek Phase I vary greatly based on the size of the system.⁵⁵
- 59) Systems within the same proposed Aqua Texas "single tariff" region that are under the jurisdiction of a separate regulatory authority such as a municipality, subsidence district, groundwater conservation district or river authority.
- 60) The respective Districts impose fees and charges to the respective affected system.
- 61) The compliance levels of the various systems within respective regions is substantially different.⁵⁶
- 62) AquaTexas is under a compliance agreement for 139 systems around the State.
- 63) Some of the costs for the systems requiring improvements include a multi-million dollar investment, *i.e.*, the Woodcreek system,⁵⁷ and Buffalo Creek system.⁵⁸
- 64) Other systems require little to no improvement.⁵⁹
- 65) Neither Aqua Texas,⁶⁰ nor TCEQ⁶¹ has performed a cost of service study on any system.
- 66) Neither Aqua Texas nor TCEQ even attempted to do a "sampling" of cost of services within the various proposed regions.

⁵² See Harkins prefiled testimony, pg. 17, lns. 9-11.

⁵³ See *Id.* pg. 18, lns. 4-5.

⁵⁴ See *Id.* pg. 18, lns. 8-12.

⁵⁵ See Gebhard testimony, Pg. 17, Ln. 8; see also Hugus testimony, pg. 64, lns. 19 -24.

⁵⁶ See Harkins prefiled testimony, pg. 18, lns. 16-23 through pg. 19, ln. 12.

⁵⁷ See Waldock prefiled testimony, pg. 9, ln. 6.

⁵⁸ See *Id.* pg. 10, ln. 10; see also Freitag testimony, pg. 13.

⁵⁹ See *Id.* 11, ln. 8.

⁶⁰ See Hugus testimony, pg. 65, lns. 4-10; see Laughman testimony, pg. 81, lns. 2-6; see Loy testimony, pg. 314, lns. 10-20; see Waldock testimony, p. 499, lns. 8-25.

⁶¹ See Adhikari testimony, pg. 805, lns. 5-24; see also Adhikari, pg. 910, ln. 10 through pg. 911, ln. 11.

- 67) Aqua Texas did not comply with either the spirit or the letter of the law articulated in TEX. WATER CODE § 13.145.
- 68) Aqua Texas has proposed a 0-20,000 gallon tier rate in this case.⁶²
- 69) Mr. Adhikari, the engineer for the State, testified that a 0-20,000 tiered rate does *not* promote conservation of water.⁶³
- 70) Mr. Adhikari testified that according to Aqua Texas actual water usage figures included in the Application (slightly above 9,000 gallons per month per customer is the average usage in both the SE and SW regions).⁶⁴
- 71) Mr. Freitag, the senior project manager for GDS, and a licensed professional engineer, testified that for the proposed North, Southeast and South regions, the average amount of water used per customer was approximately 8,000 gallons per month.⁶⁵
- 72) The TCEQ has issued a policy on regionalization entitled "The Feasibility of Regionalizing Water and Wastewater Utilities: A TCEQ Policy Statement" (hereinafter "The Policy").⁶⁶
- 73) The Texas Water Code provides that "The Commission by rule shall establish a preference that rates under a consolidated tariff be consolidated by region. The regions under consolidated tariffs must be determined on a case-by-case basis."⁶⁷
- 74) However, in order to file rates under a consolidated tariff to begin with, the utility must demonstrate compliance with Section 13.145.
- 75) In the Policy's explanation of "What is the Regionalization Policy?" the TCEQ states:

Our policy is that regionalization is feasible unless one of these three exceptions applies: (1) No other systems are reasonably close to your planned system; (2) You have requested service from neighboring systems, and your request has been denied; (3) You can successfully demonstrate that an exception based on costs, affordable rates, and financial, managerial, and technical capabilities of the existing system should be granted.⁶⁸

⁶² See Adhikari testimony, pg. 882, lns. 1-3. Ingram does not have a tiered rate.

⁶³ See *Id.* pg. 872, lns. 17-21.

⁶⁴ See *Id.* pg. 872, lns. 4-16.

⁶⁵ See Freitag testimony, pg. 407, lns. 4-22.

⁶⁶ The Policy is attached hereto as Appendix E, also, SE-12.

⁶⁷ See TEX. WATER CODE § 13.182 (c).

⁶⁸ SE-12; The Policy, pg. 3.

- 76) The Policy further states that it is “policy guidance” for new systems.⁶⁹
- 77) Appendix A of the Policy, provides a guide to “Analyzing Costs, Affordability and Capability of the Existing System.”
- 78) Factor 1 states, “Compare Costs to your development’s projected value.”⁷⁰
- 79) Factor 2 is “Consider Affordability of Rates.”⁷¹
- 80) Criterion 1 of Factor 2 states, “Rates resulting from regionalization are not affordable.”⁷²
- 81) This criterion states that to find out whether rates are affordable, a “household cost factor” must be calculated as set forth in TWDB Rule 31 TEX. ADMIN. CODE §371.34(b).⁷³
- 82) Mr. Laughman acknowledged that this “household cost factor” was *not* considered by Aqua Texas in determining whether “regionalization” was feasible within the regions.⁷⁴
- 83) No specific numbers could be given regarding the apportionment of debt to each region, although each region varies in numbers of customers and numbers of types of utility systems.⁷⁵
- 84) Aqua Texas similarly has failed to prove the existence of its capital structure, or allocated capital structure.
- 85) The price of Aqua America’s stock relative to its earnings is substantially higher than the norm on the Dow Jones Industrial Average or Standard & Poor’s.⁷⁶
- 86) Mr. Hugus’ testimony explaining the 2003 Annual Report, AT-82, reflects the fact that Aqua Texas is profitable.⁷⁷
- 87) Aqua Texas should only be allowed a rate of return equal to the 6.8% annual average related to Moody’s BAA Corporate Bond Yield.⁷⁸

⁶⁹ The Policy, pg. 5.

⁷⁰ *Id.* pg. 17.

⁷¹ *Id.* pg. 22.

⁷² *Id.* pg. 22.

⁷³ *Id.* pg. 22.

⁷⁴ See Laughman testimony, pg. 205, lns. 6-24.

⁷⁵ See Loy, pg. 327, ln. 10 through pg. 328, ln. 3.

⁷⁶ <http://finance.yahoo.com/q?s=wtr&x=084=0>.

⁷⁷ See Hugus testimony, pg. 1006, lns. 18-20 and pg. 1007, ln. 12 through pg. 1008, ln. 10.

⁷⁸ See <http://www.bondmarkets.com/story.asp?id=86>; see TEX. GOV’T CODE § 2001.090 regarding “official notice.”; see also www.maine.gov/mpuc/orders/2003/2003-793aios.pdf which provides that the Moody’s Baa Utility yield is approximately 6.71%.

- 88) The rate of return requested in this case is 12%, with a weighted average 8.44% rate of return based upon a hypothetical 50% equity and 50% debt capital structure.⁷⁹
- 89) Aqua Texas has no debt and no equity of its own and that the proposed 50/50 capital structure is hypothetical.⁸⁰
- 90) No rate of return worksheet was produced to support the 12%.⁸¹
- 91) The Executive Director's reliance upon a 12% rate of return evidences the existence of a practice that rises to the level of constituting a "rule" adopted by the Executive Director's staff regarding appropriate rates of return.
- 92) Such a "rule" clearly violates the requirements of the Administrative Procedures Act⁸² as no such rule has been lawfully promulgated, noticed or adopted.
- 93) TEX. GOV'T CODE § 2001.004 states in part: that "a state agency *shall* (1) adopt rules of practice stating the nature and requirements of all available formal and informal procedures; (2) index, cross-index to statute, and make available for public inspection all rules and other written statements of policy or interpretations that are prepared, adopted or *used* by the agency in discharging its functions. . ."
- 94) TEX. GOV'T CODE § 2001.005 states "RULE, ORDER, OR DECISION NOT EFFECTIVE UNTIL INDEXED. (a) A state agency rule, order, or decision made or issued on or after January 1, 1976, is not valid or effective against a person or party, and may not be invoked by an agency, until the agency has indexed the rule, order, or decision and made it available for public inspection as required by this chapter. (b) This section does not apply in favor of a person or party that has actual knowledge of the rule, order, or decision."
- 95) UNLAWFUL RATES, RULES, AND REGULATIONS. A utility may not charge, collect, or receive any rate for utility service or impose any rule or regulation other than as provided in this chapter. (emphasis added)
- 96) Mr. Adhikari testified that he has not performed a rate deferral in the past.⁸³
- 97) Surcharge is defined by 30 TEX. ADMIN. CODE §291.21(k)(1) as "an authorized rate to collect revenues over and above the usual cost of service."
- 98) Aqua Texas' proposed "regulatory asset" has never been recognized by the Commission.
- 99) Section 13.043 relates to the Commission's Appellate Jurisdiction.

⁷⁹ See AT-1, Attachment 10; see also Loy prefiled testimony, pg. 181, lns. 10-14.

⁸⁰ Hugus testimony, pg. 97, ln. 24 through pg. 98, ln. 9.

⁸¹ See *Id.* pg. 93, ln. 2 through pg. 98, ln. 9.

⁸² TEX. GOV'T CODE Ch. 2001.

⁸³ See Adhikari testimony, pg. 940, lns. 3-5.

- 100) Neither the homeowners associations or individuals in the SE Region or in the SW Region, nor Aqua Texas are parties appealing the decision of the governing body of a municipality to the Commission.
- 101) The SE Region and the SW Region come to the Commission based on its original jurisdiction.
- 102) Section 13.043 does not apply to the SE and SW Regions.
- 103) Subsections 13.185 (g) and (h) of TEX. WATER CODE speak to the following allowable and disallowable expenses:
- (g) The regulatory authority may promulgate reasonable rules and regulations with respect to the allowance or disallowance of certain expenses for rate making purposes.
- (h) The regulatory authority may *not* include for ratemaking purposes:
- (1) legislative advocacy expenses, whether made directly or indirectly, including legislative advocacy expenses included in trade association dues;
- (2) costs of processing a refund or credit under Section 13.187 of this chapter; or
- (3) any expenditure found by the regulatory authority to be unreasonable, unnecessary, or not in the public interest, *including* executive salaries, advertising expenses, *legal expenses*, and civil penalties or fines. (Emphasis added).⁸⁴
- 104) Title 30 Texas Administrative Code §291.31(b)(2) expands the list of expenditures which are *not allowed*, including:
- (B) funds in support of political candidates;
- (C) funds expended in support of any political movement;
- (D) funds, expended in promotion of political or religions causes;
- (E) funds expended in support of or membership in social, recreations, fraternal, or religious clubs or organizations;
- (F) funds promoting increased consumption or water;
- (G) additional funds expended to mail any parcel or letter containing any of the items mentioned in sub paragraphs (A)-(F) of this paragraph;

⁸⁴ See TEX. WATER CODE § 13.185(g), (h).

(H) costs, including but not limited to interest expense of processing a refund or credit of sums collected in excess of the rate finally ordered by the commission; and

(I) any expenditure found by the commission to be unreasonable, unnecessary or not in the public interest, *including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties, and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines.* (Emphasis added.)⁸⁵

- 105) Rate case expenses are *not* allowed, similar to political expenses, religious expenses, moneys used to finance the political agenda or religious agenda, penalties on overdue taxes, criminal penalties, civil penalties and fines.
- 106) There is no credible evidence that the invoices which Aqua Texas has paid have been reasonable or justified.
- 107) Aqua Texas submitted a “summary” of all of their invoices totaling \$2,734,778.65.⁸⁶
- 108) Actual invoices were not even submitted into evidence for the costs which occurred after September of 2006.
- 109) Andy Barrett did not testify.
- 110) Mr. Scheibelhut testified that he could only testify as to whether the expenses occurred and whether it was received by an appropriate person.⁸⁷
- 111) Testimony regarding Andy Barrett’s invoices should be considered hearsay, because Mr. Scheibelhut lacks knowledge of Mr. Barrett’s legal, consulting, and legislative work.
- 112) No one testified from Northpoint Consulting, Manley Consultants, Vonis Communications, American Productivity, IKON Office Solutions, Lloyd Gosselink, Kennedy Reporting Service, RLS Legal Solutions, Affiliated Reporters, National Legal, City of Woodcreek, City of Ingram, City of Houston, United Parcel Service, Enterprise Rent-A-Car, Pro Staff, ECI Conference Call, Convenience Office Supplies, Federal Express, Star-Telegram Operations, Severn Trent, LK Jordan & Associates, Blast!Express, Inc., Mercury Communications, Capital Printing Corp., Hotline-Terra and Minuteman Press.
- 113) Any testimony regarding Invoices from these vendors should be considered hearsay, because the individual who testified lacks knowledge of the billing practices and duties of these vendors.

⁸⁵ 30 TEX. ADMIN. CODE § 291.31(b)(2).

⁸⁶ AT-85.

⁸⁷ See Scheibelhut testimony, pg. 1103, lns. 4-11.

- 114) Mathias Jost, Peter Marek, Ruth Carlson, Mark Zeppa, Catherine Webking, Darryl Waldock, Mary Ann Herring, Nola Farris and/or Cathy Ramos did not testify.
- 115) Any other testimony regarding Invoices of these consultants should be considered hearsay, because the individual who testified lacks knowledge of either their billing practices and/or work product.
- 116) Aqua Texas' request to allocate to and recover all of the fees incurred in this rate case from the SE Region and SW Region, or even to disproportionately allocate them is unreasonable and contrary to public policy.
- 117) Such a treatment of the rate case expenses would place a heavy burden on these parties in violation of the Texas Constitution's "Open Courts" provision.
- 118) Article I, Section 13 of the Texas Constitution commonly known as the "Open Courts" provision provides the Applicant with several constitutional guarantees: (1) the courts must be actually open and operating; (2) the Legislature cannot impede access to the court through unreasonable financial barriers; and (3) the Legislature may not abrogate well-established common law causes of action unless the reason for its action outweighs the litigant's constitutional right to redress.⁸⁸
- 119) By attempting to cut-off a customer's right to contest in good faith a proposed rate increase of a utility, as is allowed under Chapter 13 of the Water Code and Chapter 291 of the Texas Administrative Code, by imposing seemingly open-ended costs (e.g., associated with filing the Rate Application package, costs to address the municipalities original jurisdiction hearings in the municipalities, all the costs of settlement of the other parties, as well as all the costs which directly relate to Aqua Texas' business decisions of which the customers have no control.
- 120) Essentially, Aqua Texas' request for a disproportionate allocation of fees requires that the SE Region and SW Region pay certain fees as "punishment" for questioning Aqua Texas' Application and following through the hearing process allowed by statute.
- 121) GDS was brought onto this project after the rate case application was already filed.
- 122) Aqua Source, Inc. had previously filed a rate application and had been through this process with GDS.
- 123) When Aqua Texas introduced the rate applications to TCEQ it did not use the TCEQ's form.

⁸⁸*Texas Ass'n of Business v. Air Control Bd.*, 852 S.W.2d 440, 448 (Tex. 1993).

- 124) As a result of its failure, Aqua Texas was asked to go and revamp their rate application in order to put it in the form which TCEQ requires.⁸⁹
- 125) GDS did approximately one million dollars worth of work to “redo” the Application.
- 126) Section 13.001 TEX. WATER CODE states:

LEGISLATIVE POLICY AND PURPOSE. (a) This chapter is adopted to protect the public interest inherent in the rates and services of retail public utilities.

(b) The legislature finds that:

(1) retail public utilities are by definition monopolies in the areas they serve;

(2) the normal forces of competition that operate to regulate prices in a free enterprise society do not operate for the reason stated in Subdivision (1) of this subsection; and

(3) retail public utility rates, operations and services are regulated by public agencies, with the objective that this regulation will operate as a substitute for competition.

(c) The purpose of this chapter is to establish a comprehensive regulatory system that is adequate to the task of regulating retail public utilities to assure rates, operations and services that are just and reasonable to the consumers and to the retail public utilities. (Emphasis added.)

- 127) Section 13.011 (b) states:

The executive director and the commission’s staff are responsible for the gathering of information relating to all matters within the jurisdiction of the commission under this subchapter. The duties of the executive director and the staff include...*protection and representation of the public interest, together with the public interest advocate, before the commission...*” (Emphasis added.)

§ 13.182 states:

JUST AND REASONABLE RATES. (a) The regulatory authority shall ensure that every rate made, demanded, or received by any utility or by any two or more utilities jointly shall be just and reasonable.

⁸⁹ See Gebhard testimony, pg. 1496, ln. 20 through -g. 1497, ln. 1.

(b) Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of consumers.

(c) For ratemaking purposes, the commission may treat two or more municipalities served by a utility as a single class wherever the commission considers that treatment to be appropriate.

(d) The commission by rule shall establish a preference that rates under a consolidated tariff be consolidated by region. The regions under consolidated tariffs must be determined on a case-by-case basis.

- 127) The TCEQ has recommended rates although Aqua Texas has admitted that there is discrimination in the rates.⁹⁰
- 128) That discrimination is exemplified when Mr. Loy admitted that cost of service is different for different customer classes and Aqua Texas has not separated the industrial from the residential customers.⁹¹
- 129) Both Mr. Loy and Mr. Blackhurst testified that capital improvements to one system do not benefit the other systems, although the other systems have to help pay for that improvement.⁹²
- 130) The TCEQ in this case audited 130 systems out of Aqua Texas' 335 total systems.⁹³
- 131) In the SE and SW Region, were allotted three days a piece for inspection, and the north region was allotted five days for inspection.⁹⁴
- 132) Mr. Adhikari stated that had he looked at a more random sampling of systems he might have found they were not substantially similar.⁹⁵
- 133) Mr. Adhikari testified to numerous schedules during his testimony which he stated that he did not know whether assets were added or replaced, used and useful, duplicative, or even what exactly certain assets included.⁹⁶
- 134) Mr. Hugus testified that Aqua America is large enough to raise capital at attractive rates, and has long-term strategies to minimize costs and maximize synergies.⁹⁷

⁹⁰ See Hugus testimony pg. 137, ln. 16 through pg 138 ln. 4. (The new customers bear the costs.)

⁹¹ See Loy testimony pg. 313, lns.6-18.

⁹² See Loy testimony pg. 327, lns. 1-4; See also Blackhurst testimony pg. 444, lns 2-7.

⁹³ See Adhikari prefiled pg. 6, lns. 7-16.

⁹⁴ See *Id.* lns. 7-16

⁹⁵ See Adhikari testimony, pg. 912, lns. 3-7.

⁹⁶ See Appendix J (Adhikari testimony pg. 859-957, specifically referring to pgs. 881-885.

⁹⁷ See Hugus prefiled testimony, pg. 11, lns. 14-15.

- 135) Mr. Hugus testified that due to the formation of Aqua Services, it has (been) proven to reduce the costs of Aqua America's subsidiaries nationwide who provide water and/or wastewater service.⁹⁸
- 136) The savings and efficiencies result from the economies of scale created by Aqua Services and *their savings are passed on to customers.* (Emphasis added.)⁹⁹
- 137) Aqua America had a total return to its stockholders of 50% in 2005.¹⁰⁰
- 138) Aqua America's officers and directors have an exclusive fiduciary obligation to its shareholders.¹⁰¹

CONCLUSIONS OF LAW

- 1) Aqua Texas was not prepared to go forward at a hearing on the data which has been submitted under subsection (a) of § 13.187 and sustain the burden of proof of establishing that its proposed changes are just and reasonable" – and therefore violated Section 13.187.
- 2) Aqua Texas violated Section 13.301 of the TEX. WATER CODE which states in part: § 13.301. REPORT OF SALE, MERGER, ETC.; INVESTIGATION; DISALLOWANCE OF TRANSACTION. (a) a utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system that is required by law to possess a certificate of public convenience and necessity or the effective date of a merger or consolidation with such a utility or water supply or sewer service corporation, shall: (1) file a written application with the commission.
- 3) Section 13.145 provides as follows:

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.

Aqua Texas violated § 13.145 by not establishing their utility systems were substantially similar in facilities, quality of service *and* cost of service.

⁹⁸ See Hugus prefiled testimony, pg. 12, lns. 20-22.

⁹⁹ See *Id.* pg 12, ln. 22 through pg. 13, lns.1,2.

¹⁰⁰ Aqua America 2005 Annual Report, pgs. 2 & 3.

¹⁰¹ *Revlon v. Mac Andrews & Forbes Holdings, Inc.*, 506 A 2d 173, 179 (Del. 1986).

- 4) Mr. Adhikari, the engineer for the State, testified that a 0-20,000 tiered rate does *not* promote conservation of water and, therefore, Aqua Texas violated Section 13.145.
- 5) By establishing they agreed with the Executive Director's unpublished 12% Rate of Return, Aqua Texas violated:

TEX. GOV'T CODE § 2001.004, which states in part: that "a state agency *shall* (1) adopt rules of practice stating the nature and requirements of all available formal and informal procedures; (2) index, cross-index to statute, and make available for public inspection all rules and other written statements of policy or interpretations that are prepared, adopted or *used* by the agency in discharging its functions. . ."; and,

TEX. GOV'T CODE § 2001.005, which states "RULE, ORDER, OR DECISION NOT EFFECTIVE UNTIL INDEXED. (a) A state agency rule, order, or decision made or issued on or after January 1, 1976, is not valid or effective against a person or party, and may not be invoked by an agency, until the agency has indexed the rule, order, or decision and made it available for public inspection as required by this chapter. (b) This section does not apply in favor of a person or party that has actual knowledge of the rule, order, or decision."

- 6) Aqua Texas should not get a "regulatory asset" or a "deferred asset" because Section 13.135 states: UNLAWFUL RATES, RULES, AND REGULATIONS. A utility may not charge, collect, or receive any rate for utility service or impose any rule or regulation other than as provided in this chapter. (Emphasis added).
- 7) Neither the homeowners associations or individuals in the SE Region or in the SW Region, nor Aqua Texas are parties appealing the decision of the governing body of a municipality to the Commission and, therefore, Sections 13.043 and 13.084 do not apply.
- 8) No rate case expenses should be allowed to be recovered because: Sections 13.185 (g) and (h) of the TEX. WATER CODE speak to the following allowable and disallowable expenses:

(g) The regulatory authority may promulgate reasonable rules and regulations with respect to the allowance or disallowance of certain expenses for rate making purposes.

(h) The regulatory authority may *not* include for ratemaking purposes:

(1) legislative advocacy expenses, whether made directly or indirectly, including legislative advocacy expenses included in trade association dues;

(2) costs of processing a refund or credit under Section 13.187 of this chapter; or

- (3) any expenditure found by the regulatory authority to be unreasonable, unnecessary, or not in the public interest, *including* executive salaries, advertising expenses, *legal expenses*, and civil penalties or fines.¹⁰² (Emphasis added);
and

Title 30 Texas Administrative Code Section 291.31(b)(2) expands the list of expenditures which are *not allowed*, including:

- (B) funds in support of political candidates;
- (C) funds expended in support of any political movement;
- (D) funds, expended in promotion of political or religious causes;
- (E) funds expended in support of or membership in social, recreations, fraternal, or religious clubs or organizations;
- (F) funds promoting increased consumption of water;
- (G) additional funds expended to mail any parcel or letter containing any of the items mentioned in sub paragraphs (A)-(F) of this paragraph;
- (H) costs, including but not limited to interest expense of processing a refund or credit of sums collected in excess of the rate finally ordered by the commission; and
- (I) any expenditure found by the commission to be unreasonable, unnecessary or not in the public interest, *including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties, and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines.* (Emphasis added.)¹⁰³
- 9) Article I, Section 13 of the Texas Constitution commonly known as the "Open Courts" provision provides the Applicant with several constitutional guarantees: (1) the courts must be actually open and operating; (2) the Legislature cannot impede access to the court through unreasonable financial barriers; and (3) the Legislature may not abrogate well-established common law causes of action unless the reason for its action outweighs the litigant's constitutional right to redress¹⁰⁴ and, therefore, Aqua Texas cannot force the protestants to be solely responsible for all rate case expenses because it would hinder their rights to court in the future, and violate the Open Courts provision of the Constitution.

¹⁰² See TEX. WATER CODE § 13.185(g), (h).

¹⁰³ 30 TEX. ADMIN. CODE § 291.31(b)(2).

¹⁰⁴ *Texas Ass'n of Business v. Air Control Bd.*, 852 S.W.2d 440, 448 (Tex. 1993).

10) Section 13.001 states: LEGISLATIVE POLICY AND PURPOSE. (a)
This chapter is adopted *to protect the public interest inherent in the rates and services of retail public utilities.*

(b) The legislature finds that:

(1) retail public utilities are by definition monopolies in the areas they serve;

(2) the normal forces of competition that operate to regulate prices in a free enterprise society do not operate for the reason stated in Subdivision (1) of this subsection; and

(3) *retail public utility rates, operations and services are regulated by public agencies, with the objective that this regulation will operate as a substitute for competition.*

(c) The purpose of this chapter is to establish a comprehensive regulatory system that is adequate to the task of *regulating retail public utilities to assure rates, operations and services that are just and reasonable to the consumers* and to the retail public utilities. (Emphasis added.); and

Section 13.011 (b) states:

The executive director and the commission's staff are responsible for the gathering of information relating to all matters within the jurisdiction of the commission under this subchapter. The *duties* of the executive director and the staff include...*protection and representation of the public interest, together with the public interest advocate, before the commission...*" (Emphasis added.)

Section 13.182 states:

JUST AND REASONABLE RATES. (a) The regulatory authority shall ensure that every rate made, demanded, or received by any utility or by any two or more utilities jointly shall be just and reasonable.

(b) Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of consumers.

(c) For ratemaking purposes, the commission may treat two or more municipalities served by a utility as a single class wherever the commission considers that treatment to be appropriate.

(d) The commission by rule shall establish a preference that rates under a consolidated tariff be consolidated by region. The regions under consolidated tariffs must be determined on a case-by-case basis – and, therefore, the Executive Director has failed in their duties to protect the consumer.

Southeast Southwest HOAs
Expenses Disputed
Related to Settlements

| <u>Firm</u> | <u>Inv. No.</u> | <u>Bates Numbers</u> | <u>Additional \$\$ Disputed</u> | <u>Reason</u> |
|-----------------------------|-----------------|----------------------|-------------------------------------|-------------------------------|
| GDS: | | | | |
| From V. Harkins | (attach list) | | 50,170.75 | Related to Settlements |
| From Gayle | 0050580-IN | 027157 - 027162 | 6,478.75 | Related to Settlements |
| From Gayle | 0052043-IN | 029194 - 029201 | <u>8,988.00</u> | Related to Settlements |
| GDS | | | <u>65,637.50</u> | Subtotal (Settlements) |
| Hazen & Terrill: | | | | |
| Unredacted | 10104 | 28817 | 570.00 | Related to Settlements |
| Unredacted | 10164 | 028818 - 028820 | 6,056.25 | Related to Settlements |
| Unredacted | 10186 | 028821 - 028823 | 6,207.50 | Related to Settlements |
| Unredacted | 10224 | 028824 - 028826 | 6,872.50 | Related to Settlements |
| Unredacted | 10261 | 028827 - 028828 | 2,238.13 | Related to Settlements |
| Unredacted | 10339 | 028829 - 028831 | 4,617.50 | Related to Settlements |
| Unredacted | 10370 | 028832 - 028834 | 5,080.00 | Related to Settlements |
| Unredacted | 10413 | 028835 - 028837 | 1,677.50 | Related to Settlements |
| | | | 2,493.75 | Public Hearings Jan.2005 |
| Unredacted | 10457 | 028838 - 028841 | 2,351.25 | Related to Settlements |
| | | | 7,837.50 | Public Hearings Feb.2005 |
| Unredacted | 10492 | 028842 - 028846 | 3,280.00 | Related to Settlements |
| | | | 285.00 | Legislative Issues |
| Unredacted | 10541 | 028847 - 028852 | 4,772.56 | Related to Settlements |
| Unredacted | 10587 | 028853 - 028860 | 17,833.76 | Related to Settlements |
| Unredacted | 10644 | 028861 - 028870 | 13,874.39 | Related to Settlements |
| Unredacted | 10662 | 028871 - 028888 | 13,975.75 | Related to Settlements |
| Unredacted | 10719 | 028889 - 028896 | 12,740.63 | Related to Settlements |
| Unredacted | 10789 | 028897 - 028905 | 25,753.47 | Related to Settlements |
| Redacted | 10931 | 27413 | 562.50 | Related to Settlements |
| | | 27423 | 138.75 | Related to Settlements |
| Redacted | 11100 | 27440 | 1,995.00 | Related to Settlements |
| Redacted | 11142 | 27375 | 641.00 | Related to Settlements |
| | 11169 | 27387 | 100.00 | Related to Settlements |
| Unredacted | 11332 | 029188 - 029190 | 8,122.25 | Mediation |
| | | | 1,500.00 | Review GDS Invoices |
| Unredacted | 11377 | 029191 - 029193 | 2,812.50 | Related to Settlements |

Southeast Southwest HOAs
Expenses Disputed
Related to Settlements

| | | | | |
|-----------------------------------|------|-----------------|-------------------|--------------------------------------|
| | | | 7,118.75 | Mediation |
| <u>Hazen & Terrill</u> | | | 134,150.94 | Subtotal (Settlements) |
| <u>Hazen & Terrill</u> | | | 10,331.25 | Subtotal (Public Hearings) |
| <u>Hazen & Terrill</u> | | | 15,241.00 | Subtotal (Mediation) |
| <u>Hazen & Terrill</u> | | | 1,785.00 | Subtotal (Legislative/Review Inv.) |
| | | | | |
| <u>Mark Zeppa:</u> | | | | |
| | 6734 | 028981 - 028986 | 9,269.88 | Related to Settlements |
| | 6763 | 028987 - 028994 | 5,004.27 | Related to Settlements |
| | 6867 | 028995 - 029002 | 1,180.83 | Related to Settlements |
| | | | | |
| <u>Mark Zeppa</u> | | | 15,454.98 | Subtotal (Settlements) |
| | | | | |
| <u>Cities Reimbursed:</u> | | | | |
| Woodcreek | | | 79,610.05 | Reimbursed per Ms. Pascua |
| Ingram | | | 14,797.46 | Reimbursed per Ms. Pascua |
| Houston | | | 11,811.47 | Reimbursed per Ms. Pascua |
| <u>Cities Reimbursed</u> | | | 106,218.98 | |
| | | | | |
| | | | | |
| <u>Total Settlements</u> | | | 321,462.40 | Settlements (without Barrett) |

Removing Actual Settlement Expenses vs. Ms. Pascua's Recommendation to Remove Settled Parties from Surcharge

| <u>#Settled Customers</u> <i>(per Mr. Adhikiri testimony)</i> <i>(Prefiled ED-B rev.8/18/06)</i> | <u>ATI Total Connections</u> <i>(per Mr. Schielbehut testimony)</i> <i>(Hearing 2/16/07)</i> | <u>Recommended Reimbursement</u> <i>(per Ms. Pascua testimony)</i> <i>(Hearing 2/16/07 & 2/19/07)</i> | <u>Calculation of Surcharge</u> <i>(per Ms.Pascua recommendation)</i> <i>(Hearing 2/16/07 & 2/19/07)</i> |
|--|--|---|--|
| 3,280 | 58,000 (45,000 water; 13,000 sewer) | \$2,100,000 (per connection, over 36 mos.) | Recommended reimbursement \$\$ divided by sum of total connections minus settled connections, divided by 36 months equals \$\$ per month per connection: |
| ***** | | | |
| <u>Total Connections</u> | <u>Recommended Reimbursement</u> | <u>Per Connection Total</u> | <u>Per Connection Monthly Surcharge 36 mos.</u> |
| 58,000 | 2,104,711.22 | 36.29 | 1.01 |
| ***** | | | |
| <u>Connections Removed</u> | <u>Per Connection Total</u> | <u>Surcharge Amount Removed</u> | <u>\$321,291.65 Actual Settlement Exp.vs.Removed \$\$</u> <i>(AT-87 2/16/07)</i> |
| | | | 321,462.40 |
| 3,280 | 36.29 | 119,025.05 | 202,437.35 |
| ***** | | | |
| <p>Note: Removing actual identified Settlement Expenses from TCEQ recommended reimbursement amount is more equitable and less expensive for all the customers who have not settled than Ms. Pascua's recommended approach of calculating the surcharge, even though the way the invoices were stated makes it impossible to make sure that ALL of the expenses related to Parties who settled have been included (i.e. if an invoice says "discovery" and does not identify the Party to whom the discovery applied, we did not include the amount in the expenses actually related to "settled parties".</p> | | | |
| <p>As you can see from the "Recommended Reimbursement" and "Calculation of Surcharge" columns, calculating the surcharge based upon the ED's approach forces the remaining 54,720 "connections" to pay \$202,437.35 MORE than removing actually identified "settlement" expenses that can be identified as such on the invoices..</p> | | | |

SE SW Region HOAs
Assets Requested to be Removed from Rate Base and Depreciation

| System | Reference Document | Reason to Remove |
|---|--------------------|-----------------------------------|
| Items Questioned in Cross of Adhikari - Not answered: | | |
| <i>(Hearing Testimony page 881, line 1 through 888, line 6)</i> | | |
| Dogwood Hills - Hydro Tank 3,000 gal. | ED-KA-24-SE | Not verified |
| Dogwood Hills - Hydro Tank 5,000 gal. | ED-KA-24-SE | Not verified |
| Candlelight Hills - Plug Well #1 | ED-KA-24-SE | Not verified |
| Lake Conroe Forest - PT | ED-KA-24-SE | Not verified |
| Lake Conroe Forest - Pressure Tanks (2) | ED-KA-24-SE | Not verified |
| West Magnolia Forest - Welded Steel PT | ED-KA-24-SE | Not verified |
| West Magnolia Forest - Hydro Tank | ED-KA-24-SE | Not verified |
| Bammel Oaks Estates I - Water Plant Upgrade | ED-KA-24-SE | Not verified |
| Oakwood Village Addition - Engineering services | ED-KA-24-SE | Not a rate base item |
| "Settled" but still in Rate Base + Depreciation schedules: | | |
| Stable Gates - Water | ED-KA-24-SE | Settled, not removed |
| Stable Gates - Sewer | ED-KA-27-SE | Settled, not removed |
| Briarcreek - Water | ED-KA-25-SW | Settled, not removed |
| Briarcreek - Sewer | ED-KA-28-SW | Settled, not removed |
| Rates Increased in Previous Rate Case but Included in this Rate Case as "New Additions": | | |
| Lake Conroe Village - Water | ED-KA-24-SE | In previous increases, not "new". |
| Lake Livingston Village - Water | ED-KA-24-SE | In previous increases, not "new". |
| Port Adventure - Water | ED-KA-24-SE | In previous increases, not "new". |
| Lake Conroe Village - Sewer | ED-KA-27-SE | In previous increases, not "new". |
| Lake Livingston Village - Sewer | ED-KA-27-SE | In previous increases, not "new". |
| Port Adventure - Sewer | ED-KA-27-SE | In previous increases, not "new". |

SE SW Region HOAs
Assets Requested to be Removed from Rate Base and Depreciation

| Non-Residential, Purchased Water, & Surface Wtr. Systems: | | | |
|---|-------------|--------------------------------------|--|
| Brittmore Utility - Water | ED-KA-24-SE | | |
| Brittmore Utility - Sewer | ED-KA-27-SE | Wholesaler (TCEQ WUD) | |
| Camilla Twin Harbor - Water | ED-KA-24-SE | Wholesaler (TCEQ WUD) | |
| Creekside Estates - Water | ED-KA-24-SE | "Other" Residential (TCEQ WUD) | |
| Creekside Estates - Sewer | ED-KA-24-SE | Wholesaler (TCEQ WUD) | |
| Dayton Oaks Estates - Water | ED-KA-27-SE | Wholesaler (TCEQ WUD) | |
| Industrial Utilities - Water | ED-KA-24-SE | "Other" Residential (TCEQ WUD) | |
| Jackport Industrial Park - Sewer | ED-KA-24-SE | Industrial/Agricultural (TCEQ WUD) | |
| Old Egypt Subdivision - Sewer | ED-KA-27-SE | Industrial/Agricultural (TCEQ WUD) | |
| Old Egypt Subdivision - Water | ED-KA-24-SE | Industrial/Agricultural (TCEQ WUD) | |
| Rolling Oaks | ED-KA-24-SE | Wholesaler (TCEQ WUD) | |
| Rivercrest - Water | ED-KA-24-SE | "Other" Residential (TCEQ WUD) | |
| Great Oaks - Water | ED-KA-25-SW | Wholesaler (TCEQ WUD) | |
| MGM Estates - Water | ED-KA-25-SW | Surface Water (TCEQ WUD) | |
| Dogwood Hills North - Water | ED-KA-25-SW | Purchase 100% of Potable Water (WUD) | |
| Shell Shores - Water | ED-KA-25-SW | Purchase 100% of Potable Water (WUD) | |
| Cedar Bay - Water | ED-KA-25-SW | Purchase 100% of Potable Water (WUD) | |
| | | Purchase 100% of Potable Water (WUD) | |
| Larger than Usual 6" Diameter Transmission Mains: (some are included in preceding category also) | | | |
| Candlelight Hills | | | |
| Industrial Utility Services | ED-KA-24-SE | 12" and 8" | |
| Rivercrest | ED-KA-24-SE | 12" down to 8" | |
| Saddlewood | ED-KA-25-SW | 12" Ductile Iron Pipe | |
| Brittmore | ED-KA-25-SW | 8" | |
| Cedar Point | ED-KA-24-SE | 8" | |
| | ED-KA-24-SE | 8" | |

TRANSCRIPT OF PROCEEDINGS BEFORE THE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
(TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)
AUSTIN, TEXAS

| | |
|------------------------------------|------------------|
| APPLICATION BY AQUA UTILITIES,) | SOAH DOCKET NOS. |
| INC., d/b/a AQUA TEXAS, INC., TO) | 582-05-2770 |
| CHANGE ITS WATER AND SEWER) | 582-05-2771 |
| TARIFFS AND RATES IN VARIOUS) | |
| COUNTIES, AND APPEAL OF RATE-) | TCEQ DOCKET NOS. |
| MAKING ACTIONS OF VARIOUS) | 2004-1120-UCR |
| MUNICIPALITIES DENYING REQUESTED) | 2004-1671-UCR |
| CHANGES TO WATER AND SEWER) | |
| TARIFFS AND RATES) | |

HEARING ON THE MERITS
FRIDAY, AUGUST 25, 2006

BE IT REMEMBERED THAT at 9:00 a.m., on
Friday, the 25th day of August 2006, the
above-entitled matter came on for hearing at the State
Office of Administrative Hearings, William P.
Clements, Jr., Building, 300 West 15th Street,
Room 404, Austin, Texas, before CRAIG BENNETT and
TRAVIS VICKERY, Administrative Law Judges, and the
following proceedings were reported by William C.
Beardmore, a Certified Shorthand Reporter of:

VOLUME 5

PAGES 859 - 957

1 PROCEEDINGS
 2 FRIDAY, AUGUST 25, 2006
 3 (9:00 a.m.)
 4 JUDGE BENNETT: Let's go ahead and go
 5 back on the record this morning.
 6 We left off yesterday with the
 7 Protestants' cross-examination of Mr. Adhikari. So,
 8 Ms. Gilkerson, if you're ready to proceed with that,
 9 you may do so now.
 10 MS. GILKERSON: Thank you.
 11 PRESENTATION ON BEHALF OF THE
 12 EXECUTIVE DIRECTOR (Cont'd)
 13 KAMAL ADHIKARI,
 14 having been duly sworn, testified further as follows:
 15 CROSS-EXAMINATION (Cont'd)
 16 BY MS. GILKERSON:
 17 Q Good morning.
 18 A Good morning.
 19 Q Mr. Adhikari -- that's also weird for me to
 20 call you "Mr. Adhikari."
 21 A Call me Kamal. That's fine.
 22 Q On Page 9, Line 4 of your testimony, you
 23 state that the systems vary in size. How does that
 24 size affect cost of the system?
 25 A If the system is bigger, then it might have

1 higher costs. But another other thing is, since it's
 2 bigger in size they have more customers to share that
 3 cost.
 4 Q Tell me about small systems.
 5 A In my opinion, a small system is, like, with
 6 one well, one storage tank, one pressure tank, maybe
 7 two booster pumps, chlorination, distribution.
 8 Q But how does that affect cost compared to a
 9 bigger system?
 10 A Well, for instance, like, if we have one
 11 system with 50 connections and compared to that we
 12 have 100 connections, the size of the system must
 13 be -- almost going to double.
 14 They might require a double size of a
 15 storage tank, double size of a pressure tank, maybe
 16 four pumps instead of two. So that's how it differs.
 17 Q So you're basically saying that the cost is
 18 the same because it's spread out among the customers
 19 depending on the -- I mean, because small systems have
 20 fewer customers and bigger systems have more
 21 customers?
 22 Is that basically what you're saying?
 23 A Yeah. Basically, what I'm trying to say is,
 24 for instance, to serve 50 connections they might
 25 require a 10,000 gallon tank and it might cost, like,

1 \$20,000.
 2 But if you have to serve 100
 3 connections, they might require a 20,000 gallon tank
 4 and it might cost \$40,000 or slightly less than that,
 5 because with a smaller system they have 50 customers
 6 to share that cost and in the bigger systems they have
 7 100 connections or customers to share that cost.
 8 Q So the rates are the same because they are
 9 spread -- the rates are basically the same?
 10 A May not be exactly, but, yes.
 11 Q Mr. Adhikari, in all the IOU rate cases you
 12 have done in the state of Texas since you've been
 13 working, have you ever had a rate in one system that
 14 was the same as another system, including base rate
 15 and gallonage?
 16 Have you ever had the exact same rate in
 17 any system you've done?
 18 A Are we comparing between two utilities?
 19 Q I'm asking you if any case you have done in
 20 your entire career with TCEQ, have you ever had the
 21 same rate for one IOU as another?
 22 A I have done like about 60 cases so far and I
 23 don't remember what the rate was in the previous case
 24 I worked on and, like, after two years maybe there are
 25 some numbers exactly the same, but I don't remember on

1 the top of my head whether I have exactly the same or
 2 not.
 3 Q Would it surprise you if I stated that there
 4 was a rate case that I was on at TCEQ where the base
 5 rate for the customers was \$120 per month because it
 6 was a small system, and there was a rate case I was on
 7 for a slightly larger system that had a base rate of
 8 \$20?
 9 MR. TERRILL: Objection. The lawyer is
 10 testifying about facts that are not in evidence.
 11 JUDGE BENNETT: I think she's just
 12 presenting a hypothetical and asked if it would
 13 surprise the witness if that were, in fact, true.
 14 So we'll take it as a hypothetical, and
 15 he can answer it.
 16 A That would not surprise me, because, you
 17 know, SS is not the only component of the cost of this
 18 item.
 19 There are some other factors where they
 20 might have higher operating costs. So we need to look
 21 into that factor as well. Not only the size and the
 22 system cost defines the rate. So there are other
 23 factors, too.
 24 So I don't know what other items were
 25 involved in that 120 base rate or \$20 base rate. I

1 don't know what other factors are included in there.
 2 Q (By Ms. Gilkerson) Would age affect the cost
 3 of a system?
 4 A Sometimes yes and sometimes no.
 5 Q On Page 6, Line 12 of your testimony, how
 6 many total systems did you inspect?
 7 A I personally visited, like I said in my
 8 prefiled, Page 6, 30 water and wastewater systems in
 9 the Southwest and 45 in the Southeast.
 10 I did not personally inspect any system
 11 in the North region.
 12 Q How many of those systems which you inspected
 13 were Aqua Development Company systems?
 14 A I did not separate for Aqua Development. I
 15 just took a look at -- you know, under Aqua Texas. I
 16 didn't separate it out.
 17 Q You said originally that you've looked at
 18 systems that were not in the previous rate case.
 19 Which systems were those?
 20 A That was one of my priorities, to look into
 21 the new system. When I say "new," that means that was
 22 not involved in the prior rate case. That was my
 23 priority.
 24 I do have the list. I don't remember
 25 all the names. I do have the list. I can furnish

1 that to you.
 2 Q Are all your adjustments which you've made,
 3 are they based on firsthand observations?
 4 A Yes.
 5 Q What about any recommendations from staff as
 6 you stated on Page 6, Line 15?
 7 A I'm sorry. What was the question?
 8 Q What about any recommendations from staff as
 9 you stated on Page 6, Line 15?
 10 A Yeah. As I said -- I mean, the North system,
 11 I did not inspect by myself. The staff person did
 12 that for me. And I meant based on their cost and
 13 inspections as well.
 14 Q So, therefore, all of your adjustments aren't
 15 based on your firsthand observations. Is that
 16 correct?
 17 A Only mine, not. I just based on their
 18 personal observations as well.
 19 Q If you would turn to AT-1, which we were
 20 looking at yesterday --
 21 A Okay.
 22 Q -- would you please turn to Page 102456?
 23 A I have it.
 24 Q Okay. Attachment 14, did you request this
 25 attachment?

1 A Yes. I do not remember the question,
 2 "particular attachments," but if I needed some
 3 information to do my job, I requested that in the
 4 discovery, yes.
 5 I don't remember asking -- I don't
 6 remember.
 7 Q Mr. Adhikari, did you request a rate design
 8 from Aqua Texas?
 9 A Yes, I did.
 10 Q Did they provide a rate design?
 11 A Not the way I wanted.
 12 Q You stated for your inspections you visited a
 13 number of new systems and ones with large assets. Is
 14 that correct?
 15 A Yes. The second priority was, you know, for
 16 the old system which they have done a higher amount
 17 addition on there. That was my second priority, yes.
 18 Q But you concluded that the ones -- the new
 19 systems with large assets were similar. Correct?
 20 A Well, my conclusion was, based on my
 21 inspection, whichever system I visited, they are
 22 similar.
 23 Q The ones with the large assets are similar to
 24 other systems with large assets?
 25 A Well, for the new system, they might not have

1 the large assets. So for the newer system it might
 2 have lesser assets also.
 3 I mean, for the old system I prioritized
 4 with the larger assets, but the new system I did not
 5 look into whether it's a -- I mean, a lesser amount or
 6 a higher amount.
 7 Q So, clearly, you've differentiated between
 8 new systems and old systems. Can you tell me how many
 9 new systems you visited?
 10 A I'm not going to say this is the exact
 11 number. I'm going to approximate. Like in the
 12 Southwest region, I would say seven or eight new
 13 systems for water and wastewater.
 14 North, I would say 20 to 25 new water
 15 and wastewater.
 16 Q Did you visit systems in the North?
 17 A Those were in my list.
 18 Q No, sir. I want to know which systems you
 19 visited.
 20 A Okay. Then my answer would be seven or eight
 21 for the Southwest with water and wastewater and around
 22 30 for the Southeast, water and wastewater --
 23 including water and wastewater, yes.
 24 Q And how many do you know were inspected by
 25 other people in the -- of the people who did the North

1 region?

2 A A new system in the North region, I would say

3 20 to 25, both water and wastewater.

4 Q So you saw 30 to 35 new systems in the

5 Southwest region, and you're saying those systems are

6 similar to all these systems in the Southwest region.

7 Is that correct?

8 A Based on my inspection, yes.

9 Q Mr. Adhikari, you stated in your prefiled

10 that you inspected 30 systems total in the Southwest

11 region, and all of those 30 systems, approximately,

12 were new systems.

13 You are saying that all those systems

14 are the same as the approximately 120 systems in the

15 Southwest region. Is that correct?

16 A Based on my review of the assets report and

17 my inspection and the supporting document, that was my

18 conclusion, yes.

19 Q Did you visit any systems with lesser amounts

20 of rate base?

21 A I didn't get your question.

22 Q Did you -- you stated that you visited

23 systems with large assets. Did you visit systems with

24 little or no assets?

25 A Well, I have been to a few systems which were

1 not in my list, but they are pretty close to the other

2 systems which I would like to visit, like in -- we

3 picked like three or four in total that was not in my

4 list, but it was nearby to the other systems I was

5 visiting, and we just ran by and saw those.

6 I don't remember the amount it has. It

7 might have a lesser amount because it was not in my

8 list. So I would say it is a lesser amount, yes.

9 Q So -- did you just say -- did you just state

10 the systems by Dallas? I might have misunderstood

11 you.

12 A I'm sorry. What was that?

13 Q Did you state that you visited systems by

14 Dallas?

15 A No. That's in the North region. I did not

16 visit those systems.

17 Q Okay. I just misunderstood you. Sorry.

18 A That's okay.

19 Q Are you establishing a rate base in this

20 case?

21 A That is my recommendation, yes.

22 Q Do you understand the significance of

23 establishing a rate base?

24 A Yes.

25 Q And what is that?

1 A Well, the main thing in establishing the rate

2 base is -- I mean, in this particular case, we don't

3 have to go through all those supporting documents the

4 next time whenever they file another application.

5 It is a benchmark for the next case. So

6 it's time saving -- you know, other resources.

7 Q Well, if that's the case, from your testimony

8 you've taken out the Woodcreek Phase 1 water and

9 wastewater system to zero percent.

10 Do you intend to put this into the

11 Conclusions of Law or Findings of Fact?

12 A Well, I had two separate exhibits for rate

13 designing proposals and rate base proposals.

14 If you look into my rate designing

15 proposals, I take it out to reflect those systems were

16 settled. But if you look into my rate base exhibit, I

17 have those assets as used and useful, because in

18 reality those are used and useful.

19 So there are two separate exhibits.

20 Q And what exhibits are those?

21 A Just give me one second.

22 Q Okay.

23 A Can I have a copy of my exhibit list? Thank

24 you. It starts from ED-KA-23, and new exhibit might

25 say "Revised 8-18-06," and it has a name like "north"

1 for the North region -- water, sewer separately.

2 So it starts from ED-KA-23, ED-KA-23a,

3 ED-KA-24, ED-KA-24a, ED-KA-25, ED-KA-25a, ED-KA-26,

4 ED-KA-26a, ED-KA-27, ED-KA-27a, ED-KA-28 and

5 ED-KA-28a.

6 Q And all of those are rate based?

7 A Yes. Those exhibits are reflected in the

8 rate base.

9 Q Because you based your base rate on the past

10 Aqua Source case, do you know in the past Aqua Source

11 case how many of the systems were visited or inspected

12 out of the 274 systems involved?

13 A I guess Ms. Harkins testified on that number,

14 but I don't remember the number.

15 Q Ms. Harkins testified that she visited 70 to

16 90 herself, but would you be surprised if 190 were

17 visited?

18 A I wouldn't.

19 Q On Page 17 of your testimony, Line 15 --

20 A Yes.

21 Q -- do you recall the average usages from the

22 Southeast and the Southwest regions from our prior

23 questions?

24 A Yes, I do.

25 Q What is the tiered rate in this case?

1 A In this case, Aqua Texas has two tiers. One
 2 lies from zero gallons to 20,000 gallons, and the
 3 second tier lies from 20,000 and up.
 4 Q Do the majority of customers in the Southeast
 5 region use greater than 20,000 gallons?
 6 A Well, the average number comes out to be like
 7 9,000 gallons.
 8 Q So they don't use greater than 20,000 gallons
 9 on average?
 10 A On average, that's right.
 11 Q And do the majority of the customers in the
 12 Southwest region use greater than 20,000 gallons?
 13 A Based on our calculations, the average is
 14 about 9,000.
 15 Q Which is less than 20,000?
 16 A Yes.
 17 Q So does a tiered rate cut at 20,000 gallons
 18 promote conservation?
 19 A It looks like with this proposed tier in this
 20 case may not, but by definition a tiered rate will
 21 normally promote conservation, yes.
 22 Q Well, on Page 17, Line 15, you state that
 23 Aqua Texas is requesting tiered rates which promotes
 24 conservation.
 25 So -- and then you said that in this

1 case it doesn't promote conservation. Do you want to
 2 explain?
 3 A My conclusion on that page is, I'm not saying
 4 Aqua Texas proposed to tier in this case to promote
 5 conservation, but they are asking for the tiered rates
 6 by structure which promotes conservation.
 7 Q So tiered rates in general might promote
 8 conservation, but in this case Aqua Texas doesn't?
 9 A Based on our calculation of the Southeast and
 10 Southwest region, yes, that's true.
 11 Q On Page 13, Line 21, you indicate you've made
 12 revisions to Crystal Forest, Brittmoore Wastewater and
 13 Dayton based on settled rates for those customers
 14 inside the corporate limits. There are remaining
 15 customers outside these corporate limits.
 16 So are you recommending different rates
 17 on systems that are obviously the same system?
 18 A Well, in that particular case, Aqua Texas has
 19 settled with those customers inside the city.
 20 We are recommending this rate which is
 21 outside the city, and we normally -- if there is not
 22 much difference in the settled rate and our
 23 recommended rate we normally don't look into that
 24 rate.
 25 We normally approve whatever the settled

1 rate is.
 2 Q Yes, sir. But you've stated throughout your
 3 testimony that you think these systems are
 4 substantially similar, and now you're saying that
 5 customers who use the same, substantially similar
 6 systems are getting two different rates.
 7 Isn't that discriminatory?
 8 MR. GALIGA: Objection, calls for a
 9 legal conclusion.
 10 JUDGE BENNETT: Yeah, I think you need
 11 to explain, because discriminatory has a specific
 12 meaning under the rules, and so you need to be more
 13 clear in terms of whether you're asking this witness a
 14 generalized discriminatory or whether you're actually
 15 asking in reference to the reference contained in the
 16 applicable rules and statute.
 17 MS. GILKERSON: I withdraw the question.
 18 Q (By Ms. Gilkerson) Do you think it's fair to
 19 charge residential customers and commercial customers
 20 the same rate?
 21 A I guess that depends when you are saying
 22 "commercial," what kind of commercial we're talking
 23 about.
 24 Q Any commercial.
 25 A Well, even though it is defined as commercial

1 by nature, there is a pattern or -- you know,
 2 (inaudible) sewer pipe may be the same. So in that
 3 case, it's still the same rate.
 4 But if there are usage characteristics
 5 that are different than residential and (inaudible)
 6 wastewater is pretty much different, then it's at a
 7 different rate.
 8 Q So you're stating that although it's well
 9 recognized by the water utility community that there
 10 are customer classes divided by residential and
 11 commercial that you think in this case residential and
 12 commercial are the same?
 13 A Again -- I mean, we have to look into what
 14 commercial usage is. Residential, that means a home
 15 that we're talking about, and, commercial, it might be
 16 a restaurant or something like that, but they just
 17 have one restroom and if their usage pattern is
 18 similar to the household uses, then it might be
 19 categorized under this one as commercial, but the
 20 usage pattern is the same.
 21 So that depends.
 22 Q I would like to ask you to read some
 23 definitions from the Principles of Wastewater Rates,
 24 Fees and Charges, the Manual of Water Supply Practices
 25 and one from the American Waterworks Association.

1 A Okay.

2 MS. GILKERSON: May I approach?

3 JUDGE BENNETT: You may approach.

4 Q (By Ms. Gilkerson) Will you please read for
5 me the definition of residential customers?

6 A "Residential: One- and two-family dwellings,
7 usually physically separate."

8 Q Now, will you please read to me the
9 definition of commercial?

10 A "Commercial: Multi-family apartment
11 buildings and non-residential, non-industrial business
12 enterprises."

13 Q After reading those two definitions, do you
14 still think that residential and commercial are the
15 same?

16 A Again, my answer would be the same. I'll
17 give you an example. You know, with a small
18 restaurant, the restaurant is not -- it's a commercial
19 unit, but the particular smallest one has the same
20 usage pattern or the production of waste is almost the
21 same with a residential unit. In that scenario, it
22 might be the same rate.

23 Q What about wastewater regarding commercial
24 and residential -- not just water? Do you say that
25 the restaurant that has the oils and the greases and

1 the waste with the one restroom is the same as
2 residential?

3 A In that matter -- I mean, the commercial
4 might produce a difference of waste compared to the
5 household. But, again, I guess we need to define how
6 much more they are producing.

7 Q Mr. Adhikari, is Brittmoore-Tanner Business
8 Park the same as a residential system like Lake
9 Livingston Village?

10 A Do you mean the system or a subdivision
11 you're talking about?

12 Q The system.

13 A Could you please repeat the question?

14 Q Is Brittmoore-Tanner Business Park the same
15 as Lake Livingston Village?

16 A I'm pretty sure I visited the Brittmoore, but
17 I'm not quite sure I visited Lake Livingston or not.

18 Maybe I have. I have visited so many,
19 so I don't remember. But I'm pretty sure I've visited
20 Brittmoore, but I don't know the answer for that,
21 because I cannot recall whether I visited that or not.

22 Q Are the costs to treat commercial waste the
23 same as residential waste?

24 A It might differ. But, you know, again, what
25 kind of wastes are we getting in the system?

1 Q Mr. Adhikari, you're the expert for the TCEQ.
2 You're the one who went and visited the systems that
3 you're saying substantially -- are substantially
4 similar.

5 The questions I'm asking you are related
6 to systems which you have supposedly visited which are
7 different in commercial -- which are commercial and
8 residential.

9 I'm just asking you the questions based
10 on what you visited. What I'm asking you is, are the
11 wastes from Brittmoore-Tanner Business Park the same
12 as from a residential area which you have visited and
13 you inspected?

14 A It might not be the same.

15 Q On Page 22, Line 5, you state that Aqua Texas
16 did not provide information on allocation of sewage
17 treated for residential and commercial.

18 Did you ask for this information?

19 A Yes, we asked them how did -- how they're
20 designed.

21 Q Page 22, Line 5.

22 A Yes, we did ask that information.

23 Q Did they provide it for you?

24 A Not the way I wanted.

25 Q Don't you think this information is necessary

1 to be provided in the form that you would like?

2 A That's why I end up recommending one rate for
3 the entire thing because I have no way to get --

4 Q And so, therefore, with the lack of this
5 information you're still able to recommend a rate?

6 A Based on the information I have.

7 Q On Page 21, Line 16, you stated that Aqua
8 Texas did not provide any information on its phased
9 rates.

10 Did you ask for this information?

11 A Yes, we asked any information for the rate
12 design. Yes.

13 Q And did you get it?

14 A Again, not in the way I wanted it.

15 Q You were cross-examined previously by Aqua
16 Texas and you were asked whether you had any problem
17 with Aqua Texas providing the information to you, and
18 you said, "No, you didn't have any problem."

19 Do you still think that that should be
20 the answer to that question?

21 A I remember I also said not all information
22 that I wanted in the matter that was provided to me,
23 there are a few items that they provided the
24 information but not the wanted it.

25 Q Mr. Adhikari, do you know who has the burden

1 of proof in this case?
 2 A Aqua Texas.
 3 Q Was their application complete with all the
 4 information you needed and the forms that you needed
 5 it on the date of its submission?
 6 A I'm sorry. What is the question?
 7 Q Was the application complete with all the
 8 information that you needed in the form you needed it
 9 on the date of its submission to the TCEQ?
 10 A I don't think all the information included in
 11 the application were in the form that I wanted.
 12 Q And even now, do you have -- is the
 13 application with all the information you needed in the
 14 format you needed it in?
 15 A Not all.
 16 Q Okay. Switching gears, I'm going to ask you
 17 to go through a lot of your schedules with me. So you
 18 may want to get those out.
 19 Please look at KA-24, Southeast, water,
 20 Page 3 of 86.
 21 A Just one second.
 22 JUDGE BENNETT: Which page?
 23 MS. GILKERSON: Starting on Page 3 of
 24 86.
 25 JUDGE BENNETT: Okay. Which -- hold on.

1 I'm not clear, then. Which document?
 2 MS. GILKERSON: It is ED-KA-24-SE,
 3 water.
 4 JUDGE BENNETT: Oh, 24 and not 24a.
 5 I'm sorry.
 6 MS. GILKERSON: Yes, 24.
 7 A I'm there.
 8 MS. GILKERSON: Your Honors, are
 9 you-all -- do you-all know what -- you're good. Okay.
 10 Q (By Ms. Gilkerson) Do you see that
 11 Dogwood Hills is on the bottom of this page?
 12 A Yes, I do.
 13 Q Now, if you'll flip to Page 5, under Dogwood
 14 Hills additions --
 15 A Yes.
 16 Q -- there are two new pressure tanks added.
 17 Is that correct? There's a hydro tank for 3,000
 18 gallons and there is another hydro tank for 5,000
 19 gallons. Is that correct?
 20 A Yes, that's correct.
 21 Q And those are two pressure tanks. A hydro
 22 tank is the same as a pressure tank. Is that correct?
 23 A Yes.
 24 Q Can you have more than three pressure tanks
 25 in one system and on one system pressure plane?

1 A No, you cannot.
 2 Q Did you remove any of the prior list of
 3 pressure tanks?
 4 A What was the question?
 5 Q On Page 4 of 86, you have three pressure
 6 tanks listed, and then on Page 5 of 86 you have two
 7 pressure tanks listed as additions.
 8 Did you take out any of the three
 9 originally listed?
 10 A No, I have not. I guess the rule is, they
 11 cannot have more than three pressure tanks in one
 12 site, and it looks like they have three different well
 13 sites in there.
 14 Q Are you sure those tanks aren't replacing the
 15 others?
 16 A Well, I don't remember Dogwood Hill, and with
 17 my list I visited the system or not.
 18 Q But you didn't check to see if these were
 19 replacement tanks?
 20 A No, it doesn't say "replacement." It does
 21 say a new hydro tank addition.
 22 Q But it just says "addition." So you didn't
 23 check to see if these additions replaced any of the
 24 other tanks?
 25 A No, I did not.

1 Q If you go to Page 15 of 86, please --
 2 A Okay.
 3 Q -- under Candlelight Hills --
 4 A Okay.
 5 Q -- you have a plug well as cost added. Did
 6 you remove more -- did you remove or move to zero
 7 percent any of the prior listed wells?
 8 A No.
 9 Q If you will go on to Page 21 of 86, please --
 10 A Okay.
 11 Q -- Lake Conroe Forest, there are two pressure
 12 tanks added. Were any removed?
 13 A I'm sorry. Which page?
 14 Q Oh, I'm sorry. Page 21 of 86.
 15 JUDGE BENNETT: Go ahead and restate
 16 your question.
 17 Q (By Ms. Gilkerson) For Lake Conroe Forest,
 18 two pressure tanks were added. Were any of the
 19 pressure tanks removed?
 20 A No.
 21 Q Go to Page 22 of 86, please. The West
 22 Magnolia Forest --
 23 A Okay.
 24 Q -- is that hydro tank a replacement?
 25 A It does say "hydro tank." So it's maybe an

1 addition or a replacement. I don't know.
 2 Q But you don't know?
 3 A No.
 4 Q And you didn't check?
 5 A Well, if I visited that system, I might have
 6 checked, but I don't remember all the systems I
 7 visited. I need to go through my list.
 8 Q As you understand it, is -- let's go to
 9 Page 23 of 86. As you understand it, is Bammel Oaks
 10 Estates a distribution system only?
 11 A Bammel Oaks Estates I or II?
 12 Q I.
 13 A It looks like -- yes.
 14 Q What is the "water plant upgrade" for
 15 \$48,000?
 16 A Well, I guess we did have some discrepancy on
 17 the decision of the asset as Mr. Freitag also
 18 testified on that.
 19 The way that it's entered into their
 20 accounting system or whatever system they have, those
 21 may not match with the invoice item.
 22 We have gone through a lot of that and
 23 tried to correct that, and there are a few still
 24 missing, and we are still working with Mr. Freitag and
 25 Mr. Gebhard on that issue.

1 So it might be for water lines but the
 2 way they put it in the water plant --
 3 Q Okay. So I have a couple of questions. If
 4 you're still working on it and they are still
 5 providing information and we're in this hearing now
 6 and their application was filed in 2004, are you not
 7 providing a recommendation today as to what their
 8 rates should be based on what you've looked at?
 9 A Well, I guess the numbers would not be
 10 changed. Maybe the description would change.
 11 Q Well, in your description -- this is your
 12 schedule -- and I'm not asking you what \$48,000 is,
 13 but I want to know what you would type a water plant
 14 upgrade. What kind of things would that be?
 15 A Yeah, I can get the invoice and give the
 16 answer for you.
 17 Q Just list in general what water plant
 18 upgrades could be -- examples.
 19 A It could be the replacement of a water line,
 20 and this is something they don't have in this plant.
 21 So it could be the water line replacement or water
 22 line additions.
 23 Q So since May of 2004 you haven't cleared up
 24 this information?
 25 A As I stated, we have gone through

1 (inaudible).
 2 Q You just stated they don't have a water plant
 3 because it's a distribution system. So do you
 4 understand why I'm confused?
 5 You have "water plant upgrade" and it's
 6 a distribution system only. Do you understand my
 7 confusion?
 8 A Yeah, the description is confusing.
 9 Q Please go to Page 24. For Berry Hill
 10 Estates, it states there's a water plant upgrade.
 11 What is that water plant upgrade?
 12 A Again, I didn't go to the invoice and pick
 13 out particular -- what items were upgraded.
 14 But the way they enter it, like a water
 15 system upgrade, they might have "chlorine, lines"
 16 under that.
 17 Q So was anything removed?
 18 A Yeah. I meant -- oh, not in this one. Not
 19 in this one, no.
 20 Q On Page 33, please, under "Oakwood Village -
 21 Additions," it states that there are engineering
 22 services for \$12,000. Can you tell me what those
 23 engineering services were for?
 24 A I guess that particular engineering service
 25 is for that booster pump and ground storage tank and

1 preparation or things like that, I believe.
 2 Q Is \$12,854 reasonable to design a ground
 3 storage tank?
 4 A I don't know the answer for that.
 5 Q What is the industry standard for engineer
 6 services for design?
 7 A I don't know.
 8 Q Would it be reasonable that the industry
 9 standard for engineering service for design would be
 10 10 percent of the cost of the construction?
 11 A It could be. I don't know the answer for
 12 that.
 13 Q Page 38, please --
 14 A Yes.
 15 Q -- Cimarron County.
 16 A Okay.
 17 Q There is an entry for a ground storage tank
 18 and a hydro tank -- and hydro tank -- and there's an
 19 entry -- there's a second entry for a hydro tank.
 20 Are these two new hydro tanks?
 21 A Again, Part 1 where it says "GST and hydro
 22 tank," it might be only for GST. But the way they put
 23 the description in there, it says "GST and hydro
 24 tank."
 25 Q We've just been going through the Southeast

1 region. We've gone page by page. Is it possible that
 2 throughout the rest of the Southeast region there
 3 could be more items which possibly weren't removed or
 4 possibly weren't followed up on as to exactly what the
 5 costs were for?
 6 A It could be, yes.
 7 Q Now, I would like to look at ED-KA-25,
 8 Southwest water.
 9 A Okay.
 10 Q Let's start with Page 4, please.
 11 A Yes.
 12 Q There is a Golden Acres Water Company
 13 addition. There's a pressure tank for 2900 gallons.
 14 Did that replace any of the three
 15 pressure tanks above?
 16 A I guess one pressure tank has been
 17 depreciated out.
 18 Q But it doesn't say if it's a replacement.
 19 Correct?
 20 A No, it does not.
 21 Q If it was a replacement, one of the pressure
 22 tanks above would have been zeroed out. Is that
 23 correct?
 24 A That's correct.
 25 Q Page 7, under "Oak Meadows" --

1 A Yes.
 2 Q -- did the electrical controls additions
 3 replace the prior electric controls?
 4 A No, it's not.
 5 Q Did you check?
 6 A Again, I need to go over my inspection list
 7 to verify that.
 8 Q There was a new Well No. 7 motor replaced.
 9 Could that have been part of that?
 10 A Let's see. It says Well No. 3 and motor
 11 replaced, but if you look at all of the list on that
 12 same subdivision it doesn't have Well No. 7 in there.
 13 So it might be Well A or B. That's what
 14 I'm saying. The description itself is kind of
 15 confusing.
 16 Q But you don't know?
 17 A No.
 18 Q Page 10, please, Eagle Creek.
 19 A Yes.
 20 Q There's an addition of a pressure iron filter
 21 tank. Was that a replacement?
 22 A What page are you on?
 23 Q Page 10.
 24 A I don't see a pressure iron filter tank in
 25 the previous list. So it might be that addition.

1 Q But you don't know?
 2 A No.
 3 Q Page 13, please. Comanche Cliffs, there are
 4 two new pressure tanks. Are either one of those a
 5 replacement?
 6 A I don't think so.
 7 Q But you don't know?
 8 A Again, I have to verify with my inspection
 9 list.
 10 Q But you don't know as you sit on the stand
 11 right now?
 12 A Yes, that's right.
 13 Q Page 19, please.
 14 A Yes.
 15 Q For water, there's a new tank. Is this tank
 16 a replacement?
 17 A Again, I have to go with my inspection list.
 18 Q But you don't know right now?
 19 A No.
 20 Q On Page 26 under "Nickerson Farm," can you
 21 tell me what meters customer consumption is?
 22 A I'm sorry. What was the question?
 23 Q Under "Nickerson Farm," it says "meters,
 24 customer consumption." Can you tell me what that is?
 25 A I guess it's the same customer meter that

1 they have replaced in the entire system.
 2 Q But what does it mean?
 3 A I don't know. I don't know the answer for
 4 what customer consumption means. The way the
 5 definition is -- I mean, the discussion is meter
 6 customer consumption, but my understanding is that
 7 this is the same meter which we have in the same
 8 Nickerson Farm addition.
 9 Q Well, I'm just saying you allowed -- you
 10 allowed it to depreciate. So I'm just curious as to
 11 what it is.
 12 A That's the meter.
 13 Q A customer consumption meter.
 14 A Well, I'm not saying that it's a customer
 15 consumption meter, but it's a meter -- I don't know
 16 why they put it under customer consumption in there.
 17 It's a meter, yes. They were trying to
 18 say it's for customer use, maybe.
 19 Q You said you don't know why they put it
 20 there. Are you talking about Aqua Texas?
 21 A Yes.
 22 Q Did they make these schedules?
 23 A Yes. They provided the list of these
 24 schedules to me, and I took it from there. So this
 25 description came from them, yes.

1 Q So you took their schedules, plugged them
 2 into your system --
 3 A Spreadsheet, yes.
 4 Q -- and didn't check what it was and just went
 5 with the numbers?
 6 A No. I mean, as I said, my understanding is
 7 it's a meter, but the way I did it it's a customer
 8 consumption customer meter.
 9 Q Did you ask them what customer consumption
 10 meant?
 11 A Well, as I said, we have gone through a whole
 12 bunch of things, and there are few we missed it or we
 13 have not gone through it, but we tried to do it for
 14 almost all --
 15 Q Mr. Adhikari, you just stated there were a
 16 few that you did miss.
 17 A Descriptionwise.
 18 Q Descriptionwise. Okay. Just verifying.
 19 Page 36, please.
 20 Are there no additions to Woodcreek
 21 Water System?
 22 A I don't think so.
 23 Q Page 62, please.
 24 A 62?
 25 Q 62.

1 A Okay.
 2 Q There are no repairs for Live Oak Water
 3 System, are there?
 4 MR. TERRILL: I'm sorry. What was the
 5 question?
 6 MS. GILKERSON: There are no repairs for
 7 Live Oak -- no additions.
 8 A That's right.
 9 Q (By Ms. Gilkerson) Okay. Please go back to
 10 Page 58.
 11 A Okay.
 12 Q I'm sorry. I'm going to switch exhibits on
 13 you.
 14 Will you please go to ED-KA-23 North?
 15 A Yes.
 16 Q Page 1.
 17 A Okay.
 18 Q Ash Creek has three inactive wells. Is that
 19 indicated here?
 20 MR. TERRILL: Objection, assumes facts
 21 not in evidence.
 22 JUDGE BENNETT: You need to -- it does
 23 assume facts not in evidence. So you need to restate
 24 the question.
 25 Q (By Ms. Gilkerson) Mr. Adhikari, are there

1 any inactive wells in Ash Creek?
 2 A In this list, I don't see.
 3 Q So do you know?
 4 A Okay. Again, that's subject to verification
 5 of my inspection list. I'm not saying whether I
 6 believe it's Ash Creek or not.
 7 Q But you don't know right now on the stand?
 8 A No.
 9 Q Is it safe to assume, Mr. Adhikari, that if
 10 we went through the rest of the Southeast region and
 11 the Southwest region and the North region we would
 12 find the same replacement issues throughout all of
 13 your schedules?
 14 A It could be, yes.
 15 Q So, therefore, is it correct to state that
 16 you did not review the additions with respect to the
 17 original rate base?
 18 A Well, as I said earlier, my starting point
 19 was the previous rate base, but I did not make any on
 20 the prior rate base.
 21 I have not added anything in there. I
 22 have not taken out anything from there. Almost --
 23 those I have found during my inspection -- if I
 24 understand, they have a pressure tank in one system
 25 and it has been replaced that I could verify in my

1 inspection, I took it out.
 2 As I said -- I mean, we have gone
 3 through those lists, and I told you that that is
 4 subject to verification with my inspection list.
 5 If those particular systems I visited
 6 and I found it's a replacement or not, if it was a
 7 replacement I took it out.
 8 Q And you came up with a rate base based on the
 9 fact that you visited less than approximately
 10 30 percent of the systems in each region?
 11 A Yes. My conclusion was based on my
 12 inspection, yes.
 13 Q Did Aqua Texas present a list to you of items
 14 which needed to be removed?
 15 A I believe -- yes, it was during our prefiled,
 16 I believe. Yes.
 17 Q And did you go through your schedules and
 18 remove those items which Aqua Texas stated need to be
 19 removed?
 20 A I think I have gone through that. But the
 21 thing was, whenever they gave me the list, most of
 22 them had like pumps and things like that which had all
 23 been depreciated out, and there were only a few items
 24 I have gone through that, I remember, yes.
 25 Q Do you have standard operating procedures

1 with your team and section of the TCEQ?
 2 A For...
 3 Q For your job.
 4 A Yes.
 5 Q Did you have follow them in this case?
 6 A I tried to follow my best.
 7 Q Is a field audit required for contested
 8 cases?
 9 A My understanding is, it may not be required
 10 to the preliminary hearing, but if you go to the
 11 evidentiary hearing, yes.
 12 Q And we're at the evidentiary hearing right
 13 now, are we not?
 14 A Yes.
 15 Q For those systems which you did not visit,
 16 did you visit with the region personnel about any of
 17 those systems?
 18 A I might have talked with somebody but not
 19 regarding this case during the review of other
 20 projects, yes.
 21 Q Okay. Well, in this case.
 22 A No.
 23 Q Did you contact the enforcement coordinator
 24 for their opinion on the response of Aqua Texas to the
 25 compliance agreements?

1 A Yes, I have.
 2 Q Did you review all the inspection reports?
 3 A As I said earlier, I reviewed -- those were
 4 in the application, and besides that I reviewed a few
 5 others.
 6 Q But not all of them. Correct?
 7 A Not all of them, yes.
 8 Q Did you request a compliance investigation on
 9 those systems with an inspection report over a year
 10 old?
 11 A I'm sorry. What was the question?
 12 Q Did you request a compliance investigation on
 13 those systems with an inspection report over a year
 14 old?
 15 A No.
 16 Q What is the purpose of a field audit?
 17 A My field audit you are talking about or the
 18 regional office?
 19 Q Your field audit.
 20 A In this case to verify the assets.
 21 Q Okay. To verify the costs. Correct?
 22 A For both assets and related costs, yes.
 23 Q And verify compliance. Correct?
 24 A Not necessarily compliance. We relied on the
 25 regional office -- the inspection on that.

1 Q And to verify whether items were used and
 2 useful. Correct?
 3 A That's right.
 4 Q Based on our ongoing -- my previous questions
 5 and what we've been talking about, are you 100 percent
 6 confident that all items in this case are used and
 7 useful that you've listed?
 8 A As I said, based on my review of supporting
 9 documents and my site inspection, I would say I was
 10 like 90 percent confident.
 11 Q Based on what we've just talked about, based
 12 on the review -- the requirements for reviewing and
 13 the inspection reports and the replacements, are you
 14 100 percent positive that all the items, all these
 15 systems in this case which you've listed, are
 16 100 percent used and useful?
 17 A I wouldn't say 100 percent, no.
 18 Q The percentage of rate of return is
 19 12 percent automatic. Have you ever recommended less?
 20 A I think that goes to the accounting. It's
 21 not my part of the...
 22 Q Were you present at the TCEQ Commissioners'
 23 agenda with respect to the certified questions?
 24 A Yes, I was there.
 25 Q Do you recall that the Executive Director was

1 instructed to update their application to include
 2 information required for 13.145 of the Water Code?
 3 A Well, I remember that was an issue, but I
 4 don't remember what the Commissioners said. Maybe
 5 they said that.
 6 Q Did you ask Aqua Texas for information
 7 specifically to address 13.145 in this application?
 8 A I don't remember particularly 13.145. I
 9 don't remember.
 10 Q How many Aqua Texas personnel came to the
 11 TCEQ and saw you personally in the last 18 months?
 12 A How many?
 13 Q Yes.
 14 A Let me make -- you mean how many I visited
 15 with or how many came to my office?
 16 Q How many have you visited with?
 17 A I would say 10 to 15.
 18 Q Can you list for us as much as you can
 19 remember who those 10 to 15 people are?
 20 A Okay. From the GDS, Mr. George Freitag,
 21 Dr. Gebhard, Mr. Chuck Loy, Maria Elena -- I'm not
 22 sure about her name. It's kind of a difficult name.
 23 She's with GDS, anyway. And from Aqua Texas,
 24 Mr. Kurt Scheibelhut.
 25 Mr. Laughman was there at one time when

1 I visited the office. There was another lady from the
 2 Fort Worth area -- Mary Ann -- I believe that's what
 3 her name is. Mr. Blackhurst was there. Who else?
 4 I visited a few folks on my site visits.
 5 I don't remember their names. I'm sorry.
 6 Q Of those people, who came to your office --
 7 to the TCEQ?
 8 A Okay. I will answer that -- your question,
 9 but I would like to add one more --
 10 Q Sure.
 11 A -- Mr. Tony. I also visited with him. And
 12 who came to my office? Mr. Freitag, Dr. Gebhard,
 13 Mary Ann -- I'm not sure of the name. She's with the
 14 GDS -- Mr. Tony and Mr. Hugus.
 15 That's all I remember.
 16 Q How many times did Mr. Freitag and
 17 Mr. Gebhard come see you?
 18 A Several times.
 19 Q Several. Less than 10, more than 10?
 20 A To be on the safe side, I would say 10 to 20
 21 times.
 22 Q What did you discuss?
 23 A They were bringing me the list, like the list
 24 we're talking about now. The way we work together is,
 25 they will bring this list to me and I will go ahead

1 and turn my spreadsheet.
 2 If I have any questions or if I need any
 3 clarification then I will get back with him.
 4 Sometimes they come to my office to discuss that.
 5 Sometimes we discuss on the phone and we try to go
 6 through as much to clear this list with the
 7 information we have.
 8 I mean, we're not talking about like
 9 five or 10 systems in this case. There are 335
 10 systems. We tried to work through each system.
 11 Whenever I found anything, I gave them a call.
 12 Sometimes they give me a call.
 13 Q So to be safe, 10 to 20 times all of these
 14 people came to visit you and, yet, you didn't clear up
 15 any of the things that we discussed today regarding
 16 the replacements or what items were -- like the
 17 distribution lines and what that plant upgrade was.
 18 Is that correct?
 19 A That's correct. I mean, we might have missed
 20 those things or, you know --
 21 Q Just out of curiosity, when you said
 22 "Mr. Tony," are you talking about Tony Koby?
 23 A Yes.
 24 Q What did you and Mr. Koby discuss?
 25 A He was making sure with me -- I mean, the way

1 we had to gather information from Aqua Texas, I'm
 2 getting that information on time, and (inaudible) is
 3 helping me to gather information and things like that.
 4 He was not providing any information,
 5 but he was just like checking behind (inaudible), and
 6 between me and (inaudible) we were getting information
 7 to and fro.
 8 Q What is your job during this rate case?
 9 What's your job?
 10 A Well, to review the application, prepare the
 11 depreciation schedule, design the rates.
 12 Q Design the rates for whom?
 13 A Aqua Texas.
 14 Q So your statement is, your job in this case
 15 is to design the rates for the utility?
 16 A Not for them, in part. In this case, I have
 17 to prepare recommendations for the ED in this Aqua
 18 Texas case. That is what I have tried to do.
 19 Q Aren't you supposed to listen to all the
 20 evidence and make an independent decision?
 21 A Ratewise, yes.
 22 Q Have you made an independent decision in this
 23 case?
 24 A Ratewise, that calculation? Yes.
 25 Q Is Aqua Texas capable of billing at different

1 rates?
 2 A I'm sorry. What was that?
 3 Q Is Aqua Texas capable of billing at different
 4 rates?
 5 A I don't know the answer for that. Maybe they
 6 have some software to do that. Maybe, yes.
 7 Q They have multiple rates with all the
 8 settlements. Would you assume that they are capable
 9 of billing these multiple rates?
 10 A I believe that, yes.
 11 Q You have zeroed out Chisholm Springs based on
 12 the inspections in the Year 2006. Aqua Texas has
 13 indicated it may have been used and useful in 2003.
 14 Correct?
 15 A Yes. I zeroed those out based on our
 16 inspection, yes.
 17 Q Wouldn't it be considered a known and
 18 measurable change that a system is no longer in
 19 service?
 20 A Well, I guess in that particular situation
 21 based on -- it's in the North region system -- what
 22 they told me was that the system is in the place but
 23 there is something going on about maybe the
 24 subdivision (inaudible) or things like that and nobody
 25 is living in there.

1 So as of this time, the system is not
 2 used and useful. That's why we took it out.
 3 Q Okay. Would you please pull out AT-1 again,
 4 please. Will you please turn to Bates stamp No.
 5 AT 103228?
 6 A It's not in this one.
 7 JUDGE BENNETT: Let's go off the record
 8 for a minute.
 9 (Off the record)
 10 JUDGE BENNETT: Let's go ahead and go
 11 back on the record. Ms. Gilkerson, you can proceed.
 12 Q (By Ms. Gilkerson) Mr. Adhikari, following
 13 up on one of Mr. Terrill's questions about your
 14 recommendations for rates and AT 103229, regarding the
 15 Southeast region --
 16 A Southeast?
 17 Q I'm sorry. It's on 230. Sorry about that.
 18 A Okay.
 19 Q You have -- they have listed an unphased
 20 water rate of 28.73 and wastewater at 52.80. Is that
 21 correct?
 22 A That's correct.
 23 Q And your recommendation for water and
 24 wastewater is 19.37 for water and 55.89 for wastewater
 25 for the Southeast region. Is that correct?

1 A Let me check that one. Just one minute. For
 2 Southeast water, I'm recommending in this case \$19.37.
 3 Q And for wastewater?
 4 A 55.89.
 5 Q So based on these numbers, for water --
 6 first -- I'm sorry. For sewer, Aqua Texas is
 7 undercharged for sewer. Is that correct?
 8 A Compared to this number, yes.
 9 Q Right. And they've overcharged for water
 10 based on those numbers. Is that correct?
 11 A Yes.
 12 Q Do you have your calculator right there?
 13 A No, I don't have it. I have one. I can grab
 14 it.
 15 Q Here's one.
 16 A I will have to use my own.
 17 Q Okay. That's fine.
 18 A Okay. I have it.
 19 Q Will you please calculate the difference for
 20 the wastewater from what you recommended and what Aqua
 21 Texas has in their notice --
 22 A Okay.
 23 Q -- for the Southeast region?
 24 A For wastewater the difference is \$3.09.
 25 Q Will you do the same for water, please?

1 MR. TERRILL: I object here. I mean,
 2 she can go through each one of these things, but
 3 what's in the record is what's in the record.
 4 If she does it, I'm going to have to
 5 come back and do the same thing. Can't we just all
 6 stipulate that his recommendations are what they are
 7 and what's in our notice is what it is, and --
 8 JUDGE BENNETT: Well, I don't know where
 9 she's going, but I just have one quick question from
 10 Mr. Adhikari just so it's clear.
 11 CLARIFYING EXAMINATION
 12 BY MR. BENNETT:
 13 Q When you calculate a sewage rate that may be
 14 higher than what the Applicant has included in their
 15 notice, you're not recommending that you rate be put
 16 into effect, are you, because, again, I just want to
 17 clarify.
 18 I don't think you would be recommending
 19 higher rates because wouldn't you run into notice
 20 problems in terms of customers not having notice of
 21 higher rates?
 22 A No. I mean, our calculation is based on the
 23 revenue requirement which we think they'd be getting
 24 in this case. So --
 25 Q But I guess when you reached the conclusion

1 that they should be charging certain rates, if they
 2 have notice lower rates, is your ultimate
 3 recommendation just that their noticed rates are
 4 acceptable, then?
 5 A Yes, that's right. But my understanding is,
 6 they are not allowed to exceed the revenue requirement
 7 in this case. That's the legal point, I guess. So,
 8 yes, you're right on that.
 9 MR. TERRILL: Your Honor, may I make a
 10 comment on that?
 11 JUDGE BENNETT: You may.
 12 MR. TERRILL: The TCEQ's rules provide
 13 for notice with regard to the overall revenue
 14 requirement.
 15 Some of their recommendations are above,
 16 some of them are below, but their recommendation in
 17 total which is what the rule references is below the
 18 revenue requirement that Aqua Texas has noticed in
 19 this case, and that's true with both water and with
 20 sewer.
 21 And so as I understand the TCEQ's
 22 rules --
 23 JUDGE BENNETT: Well, let me stop you.
 24 Is that also true before the adjustments, because
 25 we're talking about revenue requirements based on a

1 certain number of connections.

2 If adjustments are made to remove
3 certain connections, then I think you run into a
4 problem.

5 Q (By Judge Bennett) So is the revenue
6 requirement -- if you include all of the connections
7 that were included in the original tariff, is your
8 revenue requirement that you calculated higher or
9 lower or the same as Aqua Texas' noticed revenue
10 requirement?

11 A I believe it's lower, but I would like to
12 verify that with Ms. Pascua.

13 Q Okay. And that's something that I'm sure the
14 parties will be arguing over.

15 JUDGE BENNETT: I don't necessarily
16 disagree with you, Mr. Terrill, on what you were
17 getting ready to say, but I think we need to be
18 careful because they've made adjustments to remove
19 connections and that can affect whether or not a
20 revenue requirement is consistent.

21 MR. TERRILL: I understand, Your Honor.

22 JUDGE BENNETT: Ms. Gilkerson?

23 MS. GILKERSON: I was just standing
24 because I didn't know if I needed to respond to his --

25 JUDGE BENNETT: Well, I'm going to allow

1 Q Thank you.

2 MS. GILKERSON: Pass the witness.

3 JUDGE BENNETT: OPIC?

4 CROSS-EXAMINATION

5 BY MR. HUMPHREY:

6 Q One of the conclusions that you reached in
7 your prefiled testimony is that the systems within
8 each region are substantially similar. Correct?

9 A That's correct.

10 Q And that's one of the conclusions that you
11 have to reach in order to conclude that they can
12 consolidate several utilities under one tariff.
13 Right?

14 A That's right.

15 Q Now, in reaching that conclusion, I think
16 we've established that you did not take into
17 consideration the cost of service component.

18 Is that right?

19 A Yes. I particularly did not look into that
20 particular factor. That's right.

21 Q Right. Yeah, which is one of the
22 components --

23 A Yes.

24 Q -- that's in the rule. Okay. Now, let's
25 suppose that either you or somebody on your staff have

1 the witness to answer. Go ahead. You can go through
2 the question that you were going to ask.

3 MS. GILKERSON: Okay.

4 CROSS-EXAMINATION (Cont'd)

5 BY MS. GILKERSON:

6 A Okay. The difference I came up with is
7 \$9.36.

8 Q Okay. Basically, as you understand it, there
9 are more water connections in the Southeast than there
10 are sewer. Is that correct?

11 A What was the question again?

12 Q In the Southeast region there are more water
13 connections than sewer connections.

14 A I think that's right.

15 Q And based on the differences between water
16 and sewer, once you multiplied the differences by the
17 numbers of connections for water and sewer and you
18 divided them so you came up with a total -- or you
19 subtracted them so you came up with a total amount
20 that the customers were paying or owed by Aqua Texas,
21 would it surprise you if Aqua Texas actually owed the
22 Southeast region \$114,000 based on their overcharge of
23 water?

24 A I don't know the number you just said. If
25 that number is right, maybe that's true.

1 to conduct a complete cost of service analysis; that
2 is, took a look at all the systems.

3 You would expect, wouldn't you, that the
4 cost of service would vary among the systems?

5 A It could be, yes.

6 Q Right. And so if you had conducted that
7 analysis and you discovered that the cost of service
8 had varied among the systems, you might have changed
9 your conclusion about whether the systems are
10 substantially similar. Correct?

11 A That's correct.

12 Q Okay. Now, I understand, also, that you had
13 to prioritize your inspection system because you just
14 simply didn't have the time and resources to inspect
15 every system. Am I correct?

16 A That's correct.

17 Q And when you did your prioritizing, at the
18 top of your priority were the new systems, and
19 probably second on the priority list were the large
20 value systems. Is that right?

21 A That's right.

22 Q Okay. Suppose with me that instead of
23 prioritizing that way that you actually did the same
24 number of inspections but just did random systems
25 where you selected some systems that were older and

1 some that were smaller and then some that were larger
2 and newer.

3 If you had conducted a more random
4 inspection of systems, would there have been a chance
5 that you would have found that those were not
6 substantially similar?

7 A There could be a chance, but the way I look
8 into it is, you know -- I mean, in my review process,
9 first off, what I did was I went to the list and I did
10 not see any well or oil items in the system like, you
11 know, well tanks, pumps. Those are the main things.

12 If I have seen anything like that where
13 it says, you know, (inaudible) or something like that,
14 then I should have picked that one, but I didn't see
15 that in the list, and based on that I prioritized
16 based on which we have discussed, yes.

17 Q Okay. I guess this is the point that I'm
18 trying to get to, is, that if you prioritize by
19 looking at the newer systems and looking at the large
20 value systems, I'm thinking that you're inspecting
21 systems that are inherently similar because to have
22 been on the priority list they had similar
23 characteristics.

24 So what I'm suggesting to you is that if
25 you selected systems randomly that had much more

1 the systems. So we had to drive to all of those sites
2 to look into those systems.

3 On those particular systems, we spent
4 about 45 minutes. The rest where everything is in one
5 site, it won't take, like, more than maybe 20 minutes.

6 Q So if the assets are all located centrally in
7 one close location, it did not take long to go down
8 your list and --

9 A No, it won't take more than 15 to 20 minutes.

10 Q Regarding the customer count information, was
11 that provided to you by Aqua Texas?

12 A Yes, it is.

13 Q And did you have any reason to believe that
14 that information was incorrect?

15 A No.

16 Q Regarding some questions you were asked
17 yesterday about the way that your exhibits calculate
18 annual depreciation on a pro rata basis, do you recall
19 those questions?

20 A Yes.

21 Q And how if an asset is placed on-line during
22 the test year that the system that the Executive
23 Director uses pro rates the amount of annual
24 depreciation for that asset?

25 A Yes; though, especially designing it another

1 variable and much more different characteristics,
2 wouldn't there be a greater possibility that you would
3 have concluded the systems are not substantially
4 similar?

5 A It could be, it could be not. It depends. I
6 mean, what (inaudible) we're talking about.

7 Q Okay.

8 MR. HUMPHREY: Your Honors, I'll pass
9 the witness.

10 JUDGE BENNETT: ED, ready for redirect?

11 REDIRECT EXAMINATION

12 BY MR. GALIGA:

13 Q Mr. Adhikari, yesterday you were asked some
14 questions about the number of systems that you
15 inspected, and I think you gave the number that you
16 expected on each trip, and I think you stated that you
17 spent at most -- I think the most amount you stated
18 was 45 minutes inspecting one system.

19 A Yes, that's correct.

20 Q Could you describe, typically, what was
21 included in that 45 minutes and why it took that
22 specific amount of time?

23 A Okay. In some of the systems like, for
24 instance, System A has more than one well site. I
25 found to have a maximum of six well sites in some of

1 way we considered the end of the test year and the
2 date when that particular item is put in.

3 Q To your knowledge, is that same method used
4 on every rate case that the Executive Director
5 evaluates?

6 A I believe that's the system we are using,
7 yes.

8 Q Has it been used on every case that you've
9 been involved in?

10 A Yes.

11 Q Let's go back and talk about how you came up
12 with your depreciation schedule and your exhibits.

13 Can you describe what your starting
14 point was?

15 A In this case, my starting point was the rate
16 base set in a prior case, which was 1999, I believe.
17 That was my starting point.

18 I had requested with Aqua Texas to
19 provide me all the schedules since then to all of
20 their systems in the way which I can use in my
21 spreadsheet, which is their -- that's a static report
22 they called it.

23 I used that -- I mean, I inputted that
24 information in my spreadsheet to come up with a final
25 schedule.

1 Q Was there information included in the
2 application on assets?

3 A Well, in that application itself, there were
4 three reports attached with that, and to me it was not
5 particularly -- I mean, it had some items with 1999
6 and things like that.

7 So when we had a meeting with Aqua
8 Texas, I asked them to provide me the clear list for
9 the assets since they met since 1999.

10 Q You requested it in the format that the TCEQ
11 typically sees?

12 A Yes.

13 Q Did you also review other supporting
14 documentation regarding the assets?

15 A Yes, I have.

16 Q What type of documentation did you review?

17 A Well, that includes invoices, come contact
18 documents and some, like, I would say, parts of
19 invoices from the supplier or whatever it is.

20 Q Were those invoices over a specific dollar
21 amount?

22 A Yeah, we agreed on anything up and above
23 \$2500 that was already -- I mean, to -- I mean,
24 produced, because there are so many items added since
25 then and old ones of invoices there.

1 And as I said earlier, we did have some
2 discrepancy on the description itself. If I can guess
3 that while looking at the invoices, I called
4 Mr. Freitag or Mr. Gebhard and we tried to verify what
5 it was in the invoice, and we agreed to change that as
6 part of the invoices, but we missed something.

7 You know, the way they enter it -- the
8 description -- I used their format, copied it from
9 their electronic file and bring in mine. So we had
10 missed some of those.

11 We have gone through each and every
12 invoice to try to figure out -- we found some double
13 entries and we took it out. I mean, we tried to do it
14 as much as we can. And if something is missing, I
15 would be more than happy to correct that if it needs.

16 Q Do you recall how long it took you to look
17 through the boxes of invoices?

18 A Well, the thing is, we kind of went on, like,
19 they will provide me on a piece-by-piece basis so that
20 I don't have to give all my time in doing all those
21 things at one time. So we ended up on that.

22 So they would bring me on a
23 piece-by-piece basis, and I would go through that.
24 And, for example, if I collected it this week, Monday,
25 I would go through that for, like, 5 or 10 days

1 So for a starting point, we decided to
2 go with anything up and above \$2500.

3 Q Do you recall how many invoices you reviewed?

4 A Numberwise, I don't, but those are in the box
5 right there (pointing).

6 Q It filled an entire box?

7 A I'm sorry. What was the question?

8 Q Did the invoices fill an entire box? Was it
9 a whole box of invoiced?

10 A Yeah, it's more than one box.

11 Q How many boxes?

12 A I don't know what size of box we're talking
13 about. If it's a normal box like this one, I would
14 say three, three-and-a-half boxes (pointing).

15 Q When you say "this one," we're talking about
16 a standard file-size box? Correct?

17 A Yes.

18 Q Did you review all of those invoices?

19 A Absolutely, yes.

20 Q Were those for all the regions?

21 A Yes, it includes all the regions.

22 Q Then how did you use the information that was
23 provided on the invoices?

24 A Well, of the invoices it was part of the
25 verification of the dollar amount they claimed.

1 continuously depending on how much they have provided
2 to me.

3 So I do not have the exact amount of how
4 much time was spent, but I spent a good much time on
5 this one, yes.

6 Q So if I understand, the invoices were
7 provided to you by region?

8 A Yes, by region, systemwide system. And, you
9 know, I guess we started with Ingram. At that time it
10 was not (inaudible.) We started from there, and then
11 we went to Southwest.

12 We went by the size they have in their
13 region. Ingram was the smallest one and then
14 Southwest and Southeast and North. That's the way we
15 would proceed.

16 Q So then from there at some point you
17 prepared -- created a list of assets for each system?

18 A I'm sorry. What was the question?

19 Q And then at some point in your review process
20 you prepared a list -- or compiled a list of assets
21 for each system?

22 A Yeah. I mean, to save time I did not
23 particularly type all the description. What I did
24 was, they also provided me the description of the
25 asset in the electronic file, and I copied that from

1 there and pasted that so that I don't have to type
 2 each and every line for 5,000 lines and things like
 3 that.
 4 Q So then when you went and visited each system
 5 that you visited, did you have a list of the assets
 6 for that system with you?
 7 A Yeah, it should be in that box somewhere,
 8 yes.
 9 Q And while you were there at each system, you
 10 went through and you -- did you check the list of
 11 assets against --
 12 A Yes.
 13 Q -- what's on the ground?
 14 A Yes.
 15 Q Just to make clear, the fact that you cannot
 16 recall a specific asset or a specific item today does
 17 not mean that you did not verify that that item
 18 existed or did not exist?
 19 A That's right. I cannot remember all the
 20 systems I visited and I what I see, what I don't. I
 21 mean...
 22 Q Do you stand by your assertion that you were
 23 90 to 95 percent confident or have 95 percent
 24 confidence in the depreciation schedule that you
 25 prepared in this case?

1 A Yes, based on my inspection and supporting
 2 documents I reviewed, that's right.
 3 Q When you were doing your site inspections,
 4 did you use the inspection reports?
 5 A No. I went through the list which was
 6 provided by Aqua Texas and went through that list.
 7 Q Do inspection reports contain lists of assets
 8 for the specific systems?
 9 A Well, sometimes it does -- you know,
 10 sometimes in the inspection report and they will put
 11 out a layout drawing and say, "Well 1, Well 2,"
 12 pressure tank, ground storage tank," but it doesn't
 13 necessarily give you which year or anything like
 14 that -- some of the specific -- but they have a layout
 15 drawing layout at the end of the phase, yes.
 16 Q What is your understanding of why the
 17 application requests inspection reports?
 18 A I guess my understanding is that particular
 19 matter is -- if the system has any violations and how
 20 they are trying to -- I mean, resolve that issue, if
 21 they have any.
 22 If they don't have any violations -- I
 23 mean, it is better to have -- it's not -- I mean, I
 24 don't think it's required at a situation where there
 25 is no violation. They don't have to do anything.

1 But if they have violations, I would
 2 like to know what process they are doing to resolve
 3 those, are they making any improvements or anything
 4 like that.
 5 Q So is the point to determine if there are any
 6 outstanding violations and if there are what the
 7 utility is doing to correct them?
 8 A Well, my personal opinion is -- I mean, if
 9 the utility is working to resolve that, then they
 10 should get the credit for that, yes.
 11 Q Just to clarify something else also that came
 12 up yesterday, I believe you were asked if it was your
 13 testimony that all of the Aqua Texas systems are
 14 meeting the TCEQ standards. Do you recall that --
 15 A Yes.
 16 Q -- line of questioning?
 17 A Yes, I recall that.
 18 Q What is your testimony regarding whether or
 19 not all of the systems are meeting the TCEQ standards?
 20 A Well, that's true. I mean, there are a few
 21 systems still with minimum standards and they are
 22 following the standards that we make. But when I try
 23 to say "all," that means the majority of the systems.
 24 Q The majority of the systems?
 25 A Yes.

1 Q For the most part?
 2 A Yes. During this proceeding I looked at 20
 3 to 40 systems that are -- besides that, the rest --
 4 everything has been taken a guess. So...
 5 Q Just so we're clear on something else, you
 6 were asked several questions today about new systems.
 7 Are you referring to new systems as
 8 newly-built systems or systems acquired since the '99
 9 rate base, just to clarify that for the record?
 10 A When I say "new system" in this case, that
 11 means those systems were not involved in the prior
 12 rate case.
 13 It might be built before 1999, but this
 14 is new for this case, which was not established in the
 15 rate base in the prior case.
 16 Q To your knowledge, is there anything in
 17 Chapter 13 of the Water Code or the Commission's rules
 18 that defines a rate that promotes water conservation?
 19 A I'm sorry. What was the question again?
 20 Q Are you aware of any specific definition of a
 21 rate that promotes water conservation?
 22 A I'm not particularly familiar with any
 23 particular rule, but by definition it says -- I mean,
 24 in the rate design if you have the minimum gallonage
 25 including the base rate and have a tier rate, that

1 (inaudible) but I don't think of any particular
2 definition of that.

3 Q Is there one particular rate that promotes
4 water conservation?

5 A I don't think so.

6 Q In your opinion, do you look at whether or
7 not a rate promotes water conservation on a
8 case-by-case basis, then?

9 A Yes. Sometimes -- you know, sometimes they
10 will have a tier rate to promote conservation.
11 Sometimes they will have a higher gallonage rate not
12 exceeding the revenue requirement, but a higher --
13 like gallonage rate and lower base rate to promote
14 conservation.

15 So it might be different in each case.
16 I mean, may I clarify that a little bit more?

17 Q Yes.

18 A Okay. For instance, let's talk about a
19 particular number. If their revenue requirement is
20 less than 50,000, and they have a base rate of 25 and
21 a gallonage rate of \$2, instead of having that rate
22 they can go to the 4.50 in the gallonage rate and it
23 is the base to \$15 without exceeding that revenue
24 requirement.

25 So you can play with those numbers, not

1 annual average?

2 A It could be, yes.

3 Q What months do households typically use the
4 most water?

5 A In the summertime. I would say February,
6 March, April, May and June -- all the rest -- or
7 September -- and then, you know, in the wintertime
8 that will go down.

9 Q And what is your understanding of why that
10 is?

11 A Well, in summertime, you know, I guess
12 everybody uses more water -- like they might drink
13 more water than in the winter. They might take
14 showers several times in the summertime than in
15 winter.

16 They have to, you know -- some amount
17 that goes to their yard, I guess, in the summertime
18 that they don't have to water in the winter.

19 Q Are you familiar, then, with when water
20 utilities, in general, see their greatest demand for
21 water?

22 A In the summertime.

23 Q Is that when utilities typically see or have
24 more problems with low pressure or no pressure?

25 A That could be right, yes.

1 crossing that revenue requirement, to come up with
2 higher gallonage and lower base rate. Even if you
3 have a tier rate or a high gallonage, the intention is
4 to promote conservation.

5 So it can go any direction anyway.

6 Q So you're targeting a -- you're coming up
7 with a break in the tier that's designed to impact a
8 certain number of customers?

9 A I'm sorry. What was the question?

10 Q So in coming up with a rate that promotes
11 conservation, is one of the ideas to set the tier at a
12 level that will impact a certain number of customers?

13 A Well, that's one way of doing that, yes, to
14 promote conservation. You just in that particular
15 region or particular system you set that as a trigger
16 point.

17 You know, if you don't have that
18 information, you can do a higher gallonage rate and
19 reduce the base rate.

20 Q Is it your experience that water usage for
21 the average household fluctuates during the year?

22 A During the year, absolutely, yes.

23 Q But does that mean that an annual average a
24 household might use in particular months is a
25 different amount than what would be reflected in their

1 Q So then in your opinion, would it be more
2 important to -- for a rate that is going to promote
3 conservation to promote conservation during the
4 summertime?

5 A Yes, that's the case -- I mean, yes.

6 Q Mr. Adhikari, you testified that your
7 recommendation for the sewer rate was for one flat
8 rate?

9 A Yes, that's right.

10 Q Could you explain why that is your
11 recommendation?

12 A Well, as I said, like, you know, on
13 particular rate design, Aqua Texas has proposed a
14 different rate for residential and commercial, but
15 there is no allocation of the cost how much revenue
16 they're going to collect from residential and how much
17 from the commercial.

18 In other words, they have not clearly
19 assumed the calculation to defer that amount like they
20 have -- "X" amount of the revenue -- and part of that
21 goes to commercial and part of that goes to
22 residential and come up with a rate.

23 So the lack of that information I cannot
24 allocate based on my guess or something like that to
25 come up with a different rate. So that's why I

1 recommended one flat rate for all.
 2 Q You were also asked some questions about
 3 meetings or discussions you had with Aqua Texas
 4 personnel.
 5 Is it typical in a rate case for you to
 6 have discussions with personnel from the utility?
 7 A Yes, it's typical. And particularly in this
 8 case, you know, there are so many things to look into
 9 that.
 10 So I think it's normal. It's obvious to
 11 do that, I guess.
 12 Q Even on the smaller cases it's common for you
 13 to meet with --
 14 A Yes, I have done that similar thing with a
 15 smaller case, too, yes.
 16 Q There was nothing different about this case
 17 in that respect?
 18 A No. I mean, we did a little bit more in this
 19 case because of the magnitude of this case.
 20 Q Did some of the Protestants or Protestants'
 21 representatives also come to the TCEQ offices?
 22 A I believe they come to visit us one time, but
 23 on that particular day I was not present and others
 24 helped them and things like that.
 25 Q When you were preparing your depreciation

1 not be there -- right --
 2 A Yes.
 3 Q -- by Ms. Gilkerson? And the lady that was
 4 feeding her questions during that was Ms. Harkins who
 5 used to work at the TCEQ or TNRCC. Right?
 6 A That's right.
 7 Q And she's very familiar with this process, is
 8 she not?
 9 A I believe so.
 10 Q Mr. Adhikari, have you ever heard anything
 11 about any of those particular complaints about your
 12 rate base schedules before you sat here in the court
 13 today?
 14 A No, I have not.
 15 Q Have you ever told any of the Protestants,
 16 including Ms. Harkins, that she can't come and give
 17 you information just like Aqua Texas and GDS have to
 18 just clear these matters up?
 19 A I have no conversations with her.
 20 Q Would you have given her all the
 21 opportunities any of them wanted to clear these
 22 matters up?
 23 A Yes.
 24 Q You didn't give any special preference to
 25 Aqua Texas in giving access -- giving you this

1 schedules --
 2 A I'm sorry. What was the question?
 3 Q Let's go back to the depreciation schedules
 4 that you prepared.
 5 A Okay.
 6 Q Did you verify that the information in those
 7 was correct?
 8 A Yeah, to the best of my knowledge. Yes.
 9 Q Is that based on the information that was
 10 provided to you?
 11 A Yes.
 12 Q And the inspections that you conducted?
 13 A Yes.
 14 MR. GALIGA: No further questions.
 15 JUDGE BENNETT: Applicant?
 16 RE-CROSS-EXAMINATION
 17 BY MR. TERRILL:
 18 Q Mr. Adhikari, this case has been going on for
 19 about two years. Right?
 20 A Yes, that's correct.
 21 Q Or over?
 22 A Yes.
 23 Q There has been a lot of discussion about your
 24 rate base schedules, and some allegations were made
 25 today that certain items are in rate base that ought

1 information, did you?
 2 A I did not.
 3 Q I'm going to have to go back to yesterday for
 4 some of these clarifications.
 5 There was testimony yesterday about the
 6 TCEQ database, which is what you were referring to.
 7 You were talking about looking up things
 8 on the TCEQ computer system. Do you recall that
 9 testimony?
 10 A Yes, I do.
 11 Q Will you just briefly explain to the ALJs how
 12 that database works and how you can sit at your desk
 13 and get information on the systems?
 14 A Okay. We do have internal database that we
 15 normally use when we have to look into the compliance
 16 and things like that. It's called the "Water Utility
 17 Database."
 18 With the name of the system or PWS ID
 19 (phonetic) of the system or with the (inaudible)
 20 number, we can get access to that particular system
 21 information.
 22 You will find the name of the system and
 23 the date of inspection done. If there is any
 24 violations, it also records the scoring there. So
 25 what I did in this particular case was, I reviewed the

1 inspection report attached with the application and
 2 went to that list.
 3 There are a whole bunch of lists which
 4 have a (inaudible) score. That means they don't have
 5 any violations. And they do have some systems which
 6 has some (inaudible) score, which means they have some
 7 violations.
 8 As I said yesterday, I reviewed 10 -- I
 9 mean, 20 to 25 or 25 to 30 other inspection reports.
 10 I was trying to get information of what kind of
 11 violations they had, depending on what kind of score
 12 they have and just went through those 20, 25
 13 inspection reports.
 14 Q And Mr. Adhikari, did you -- can you look at
 15 that database and tell, for instance, whether a system
 16 is active or inactive?
 17 A Yes. It does that, yes.
 18 Q When you went through the Aqua Texas -- the
 19 various Aqua Texas systems -- did you go and look on
 20 the TCEQ's database to look at individual systems and
 21 determine their status?
 22 A Yeah. I did that by myself, and also I got a
 23 list from (inaudible), as I said, of systems
 24 interconnected where a system was bought or a system
 25 was sold.

1 Q So you've already talked about site visits
 2 that you made. There is rate base that was
 3 established from the prior case that had used and
 4 useful determinations. Right?
 5 A Yes.
 6 Q In addition to that, you looked at invoices
 7 that were provided to you -- several boxes' worth --
 8 and those invoices provided information about, for
 9 instance, wells that were put in or storage tanks --
 10 that sort of thing. Correct?
 11 A That's correct.
 12 Q And then in addition to that, you were able
 13 to look at TCEQ's database to find information about
 14 the various systems?
 15 A That's correct.
 16 Q Okay. Let's talk about the rate base from
 17 the last case. And when I say the "last case," I'm
 18 talking about, of course, the 1999 test year involving
 19 AquaSource.
 20 Are you familiar with that case,
 21 generally speaking?
 22 A Kind of, yes.
 23 Q You're certainly familiar with the
 24 Commission's order that came out of that case.
 25 Correct?

1 A Yes.
 2 Q And the team leader for the Executive
 3 Director that worked on that case was Ms. Harkins.
 4 Correct?
 5 A That's correct.
 6 Q And Ms. Harkins recommended denial of that
 7 application. Is that your understanding?
 8 A That is my understanding, yes.
 9 Q And that was ultimately overruled. Correct?
 10 A I don't know that part.
 11 Q Let me put it this way: The Commission
 12 ultimately granted the rate increase based on a
 13 settlement. Is that fair to say?
 14 A I hope, yes.
 15 Q Now, using that rate base from the last case,
 16 you, as I understand it, asked Aqua Texas and GDS for
 17 specific types of information that you wanted such as
 18 retirements and additions. Is that correct?
 19 A That's correct.
 20 Q Can you give a little bit more explanation of
 21 the specific items that you asked for and what
 22 information you were provided in that regard?
 23 A I guess that was our first meeting with the
 24 Aqua Texas people on this case. What I personally did
 25 was, I took the copy of the rate base that was set in

1 the prior rate case, 1999, and saw in the permit that
 2 this is how I want information -- basically, what the
 3 discussion is, when it was put in, what the amount is.
 4 And for all of those assets, I also
 5 would like to have supporting documents. Also, I
 6 asked for them to give me anything that has been taken
 7 out from that rate base so that I could be able to go
 8 ahead and reconcile that and come up with a final
 9 list.
 10 Q Were you given a list of retirements?
 11 A Yes, I have.
 12 Q And were you given a list of additions --
 13 additional plant investment for systems?
 14 A Yes.
 15 Q And were you provided with a number of
 16 schedules in the format that you requested?
 17 A Yes.
 18 Q I'm going to refer back to that rate order
 19 from the last case. There was some discussion about
 20 the gallonage charges.
 21 Are you familiar with the fact that the
 22 gallonage break in the last order was zero to 20,000
 23 for the first tier and then 20,000 and above in the
 24 second tier?
 25 A That's what I saw in their current tariff,

1 yes.

2 Q And that's the same that's been -- that's

3 carried forward into this case as well?

4 A That's what my understanding is, yes.

5 Q Mr. Adhikari, there has been discussion about

6 gallonage that's used on an annual basis, and I think

7 one of the numbers that you gave was 9,000 gallons per

8 month. Is that correct?

9 A For Southeast and Southwest, yes.

10 Q Right. I mean, obviously, there is going to

11 be significantly more usage in the summer than there

12 is in the winter. Right?

13 A I agree with that.

14 Q So what is the -- what is the residential use

15 that is the highest demand during the summer months?

16 A What was the question again?

17 Q What causes consumption to go up during the

18 summer?

19 A Well, I guess the hot temperature.

20 Q Pardon me?

21 A The hot temperature. People who would like

22 to drink more water in summer and wants to take more

23 showers than during the winter.

24 Q Is lawn watering one of the main --

25 A That is one of the factors, yes.

1 Q Now, there's different ways that you can have

2 a conservation rate. Correct?

3 A Yes.

4 Q I mean, in other words, it's not just the

5 tiers and an inverted block structure. Correct?

6 A Yes.

7 Q Is it fair to say that if you don't have any

8 gallonage included in the base rate, that promotes

9 conservation as well?

10 A One part, yes.

11 Q Let's talk about the TCEQ meter equivalents

12 for a minute. There was discussion on

13 cross-examination about different customer classes.

14 Can you please explain just very briefly

15 how, when you start off with a 5/8ths by 3/8ths --

16 5/8ths by 3/4's inch meter, how the TCEQ meter

17 equivalents work off of that base meter size?

18 A Okay. That 5-by-8 by 3-by-4-inch meter is

19 generally the size of the meter, and anything up and

20 beyond we use the meter equivalent factor to design

21 the rate for bigger meters.

22 Q And do those larger meters typically

23 represent different customer classes?

24 A Yes, it does. But sometimes, you know, the

25 residential customer also can have like a 1-inch meter

1 based on their demand.

2 Q But that's their option. Right?

3 A That's right.

4 Q And are you -- do you know what percentage of

5 Aqua Texas customers for the 335 or so systems are

6 residential?

7 A Can you repeat the question, please?

8 Q Let's do it this way: Is it fair to say that

9 an overwhelming -- almost all of the customers are

10 residential for Aqua Texas systems?

11 A There are a few meter -- mid-sized customers

12 also in this application.

13 Q What percentage? Do you know?

14 A I did not calculate that.

15 Q For instance, less than 5 percent?

16 A I don't know the number, but it's fairly

17 less, yes.

18 Q Pardon me?

19 A It's fairly less, but I don't know the

20 number.

21 Q In Volume 8, Exhibit No. 59, Mr. Adhikari,

22 this is -- I'm looking at Aqua Texas Exhibit

23 No. 59.

24 This is the July 7, 2004 letter from

25 Mr. Laughman to Glenn Shankle, TCEQ's Executive

1 Director. Have you seen this letter before?

2 A Yes, I have.

3 Q And back on the last page of it, there is a

4 chart that is entitled "Aqua Texas, expense, deferral"

5 and then "recovery summary." Have you seen this chart

6 before?

7 A Yes, I have.

8 Q There was some discussion earlier about the

9 deferred costs and the rate design that went into

10 that.

11 Did you ever make any -- did you ever

12 talk to GDS or anyone make a specific request for more

13 information on that particular item?

14 A No. Actually -- I mean, I saw this

15 particular page, AT 105001, after our -- I mean,

16 prefiled which was due on June 30, 2006, as to this

17 particular chart after that date.

18 Q Okay. The point that I'm getting to is, the

19 chart has been there since July of 2004. Correct?

20 A Yes.

21 Q And it's not like you said, "Hey, we need

22 more information on this," and Aqua Texas didn't give

23 it to you. Is that a fair characterization?

24 A Yes.

25 Q Have you ever calculated a phased rate

1 before?

2 A To my personal knowledge, I have not.

3 Q Mr. Adhikari, have you ever calculated a

4 deferred cost recovery plan before?

5 A No, I have not.

6 Q There were a number of questions that counsel

7 for the Southeast and Southwest region asked you about

8 specific items in your depreciation schedules,

9 alleging, at least, that there are mistakes in there.

10 It's possible -- this is a human

11 process. Anybody can make mistakes. There might be

12 mistakes in the -- against Aqua Texas as well.

13 Correct?

14 A It's possible it could be, yes.

15 Q Okay. But if you were presented with that

16 evidence, is it fair to say that if you were shown a

17 mistake and given an opportunity to correct it that

18 you would correct it?

19 A I would, and I would like to correct it,

20 still.

21 Q And you've been even handed -- or -- in your

22 treatment of both sides on this matter, is it fair to

23 say?

24 A What was that again?

25 Q If they had come to you with information

1 about mistakes, would you have fixed that in your

2 schedules?

3 A Sure, yes.

4 Q Mr. Adhikari, counsel also asked you to look

5 at the rates for the Southeast region -- Southeast

6 water, in particular.

7 Now, in your prefiled testimony, in the

8 revised version of it, she only pointed you to one of

9 your two recommendations. Correct?

10 In other words, you made two

11 recommendations or two calculations for what the base

12 rate would be. Is that correct?

13 A I'm sorry. I didn't get your question.

14 Q Okay. When you -- and this is true for --

15 I'm asking this really for all of the regions.

16 In your prefiled testimony, you

17 calculated on the water side two different base rate

18 calculations with different gallonage amounts. Is

19 that correct?

20 A That's correct.

21 Q Okay. When counsel was asking you to compare

22 those rates, she only mentioned one of those two

23 rates. Is that correct?

24 A Yes.

25 Q And that was the gallonage for the Southeast

1 region which was \$19.37. Does that sound right?

2 A Yeah, \$19.37 is with 2.95 per thousand

3 gallons, yes.

4 Q Okay, the 2.95 gallonage. Now, let's look at

5 the Aqua Texas' proposed phased rate for 2004.

6 A For the Southeast, Southwest?

7 Q Yeah, Southeast water.

8 A Which page are we in?

9 Q I'm sorry. I do not have a page number.

10 A I guess...

11 Q It looks like it's 103362.

12 A Southeast, yes.

13 Q Now, Mr. Adhikari, under 2004, read what the

14 noticed gallonage rate was for 2004.

15 A \$2.47.

16 Q Now, the rate that she was talking about was

17 19.37. Correct?

18 A Yes.

19 Q But the gallonage was 2.95. In other words,

20 it was a higher gallonage.

21 A That's right.

22 Q Now, your other calculation for the base rate

23 for the Southeast region was actually 28.85. Is that

24 correct?

25 A Yes, with a gallonage rate of \$1.78.

1 Q So the amounts varied depending on what the

2 gallonage is. It's not just a -- it's not just a

3 straight calculation between the difference in the

4 base rate. Correct?

5 A Yes.

6 JUDGE BENNETT: Mr. Terrill, we're just

7 trying to gauge whether it would be best to press on

8 through lunch or to take a break.

9 MR. TERRILL: I think it's best to press

10 on. I don't have very many more questions. That's my

11 feel.

12 JUDGE BENNETT: Okay. You think you'll

13 be done soon. And, then, Ms. Gilkerson, how long did

14 you anticipate?

15 MS. GILKERSON: I don't have any more

16 questions, based on this so far.

17 JUDGE BENNETT: No, I understand. Okay.

18 That's fine. That's what we wanted to gauge.

19 Q (By Mr. Terrill) And let me just -- while

20 we're at this, let's do -- let's look at Southeast

21 sewer as well. Now, you recommended \$55.89 cents. Is

22 that correct?

23 A Let me check that. Just one second.

24 Southeast sewer?

25 Q Yes, sir.

1 A 55.89.
2 Q Okay. Now, let me ask you to go to the
3 proposed phased rates that Aqua Texas noticed, and
4 it's at Page 103393. And, if you would, read the
5 amount for the first year, 2004. Let's see here.

6 A Southeast or --
7 Q Hang on just a second here. Okay. It's
8 right there (pointing). For 2004?

9 A It's 37.95.
10 Q And for 2005?

11 A 46.60.
12 Q And even for 2006?

13 A 55.01 -- oh, sorry -- 54.01.
14 Q In all of those cases that amount is below
15 the 55.89 that you have calculated that Aqua Texas
16 could have collected from the first day possible in
17 July of 2004. Is that correct?

18 A Yes, that's correct.

19 CLARIFYING EXAMINATION
20 BY JUDGE BENNETT:

21 Q Since we are talking about this, I'll throw
22 in a quick question related to what I asked you
23 earlier.

24 In a given region -- and we'll use the
25 Southeast region because we know you've recommended or

1 dealing with different customer classifications and
2 you're shifting costs and so on among classes, but
3 when you're dealing with one class as essentially
4 we're dealing with here, for the most part, if you
5 have a revenue requirement, ultimately you're talking
6 about dividing that up equally among your customers.

7 So if you come up with a higher monthly
8 rate -- unless you're shifting gallonage charges and
9 things like that, which that's what I would like you
10 to explain.

11 A But -- I mean, I guess in this particular
12 sewer rate design, if you look into that Page 103393,
13 there are two different types of rate for commercial
14 and residential.

15 For instance, proposed rate for
16 commercial was 52.80 and for different commercial they
17 have 67.55, 168.88 -- things like that.

18 In their part of their design, what they
19 did is, they allocated that revenue in two different
20 classes, but in ours we did not do it that way.

21 So it's not a comparison between 52.80
22 and 55.89. You have to consider that there are some
23 parts of that revenue goes into that commercial rate
24 as well.

25 Q So your explanation is that the difference

1 calculated a rate design that comes up with an
2 unphased rate higher than that which was indicated in
3 Aqua Texas' filing, but you've opined that your
4 revenue requirement is lower.

5 So what is the basis for reaching a
6 higher rate but based on a lower revenue requirement?
7 How do you get to that conclusion?

8 A Okay. What I was trying to say was -- I
9 mean, with this rate which we came up with 55.89, I
10 don't think that necessarily crossed the revenue
11 requirement they are asking. That was my conclusion.

12 Q Right. And I guess what I'm asking you is,
13 if Aqua Texas has calculated a revenue requirement and
14 then a rate and your rate is, as you've indicated,
15 higher but you've indicated your revenue requirement
16 is not necessarily higher, how do you come to that --
17 what is the basis, do you believe, for the difference
18 between your calculations and Aqua Texas' calculations
19 in terms of monthly rates?

20 I mean, it seems to me the primary
21 variable would be connections since you're not talking
22 about different customer classes, but I would like to
23 know how you got to that conclusion, because
24 ultimately I'm not fully understanding.

25 I understand in rate design when you're

1 would be accounted for because you're ultimately
2 charging higher rates to some of the non-residential
3 sewer?

4 Is that how you would get to that point?
5 A Yes, that's correct.

6 MR. TERRILL: Your Honor, I think if I
7 can ask one question I might be able to help clarify.

8 JUDGE BENNETT: Please do.

9 RE-CROSS-EXAMINATION (Cont'd)
10 BY MR. TERRILL:

11 Q Mr. Adhikari, I'm going to ask you to turn to
12 just the page right before that, which is 103392, and
13 just ask you to explain -- actually, that's the wrong
14 page.

15 If you apply the TCEQ meter
16 equivalencies on the sewer side in the same way that
17 you have previously discussed with regard to water,
18 can you explain how that 5/8ths by 3/8ths by 3/4's
19 inch recommendation is then translated into different
20 rates for different meter sizes?

21 A Yeah. Different meter sizes have different
22 multiplying factors. Like, for instance, for a 1-inch
23 meter is 2.5 times 5/8ths by 3/8ths by a 4-inch sized
24 meter.

25 So in Aqua Texas' design they have

1 implemented those in there. So it's not all 5/8 by
 2 3/8 by 4, and part of the revenues goes on that class
 3 of customer as well.
 4 But in my recommendation I am
 5 calculating the rate for all classes, like 5-by-8 or
 6 1 inch or whatever the meter size is.
 7 Q Could the rate calculation that you used be a
 8 basis for setting the 5/8ths and 3/4 inch sewer meters
 9 and then apply TCEQ meter equivalencies above that?
 10 A In that case, it looks like we'll be
 11 executing the revenue requirement that you are asking,
 12 because your monthly flat rate for residential is
 13 52.80.
 14 Q Let me ask you to --
 15 A Or, I guess, to clear these things up, I
 16 think if we look into Page AT 103393, the way it says
 17 non-residential sewer, but it has the same meter size
 18 5/8 by 3 by 4.
 19 On that particular line they have a rate
 20 of 67.55. I mean, if we compared that number with
 21 this number, then that makes sense. We have a lower
 22 revenue requirement and come out with a lower rate
 23 than what they were asking for.
 24 Q Okay. Two more questions on this just
 25 quickly. One is, when Aqua Texas implemented its

1 water and wastewater plans, do you have an
 2 understanding on whether Aqua Texas limited the amount
 3 of rate increase on the sewer side?
 4 A I guess that's what they say, like 40 -- 70
 5 and 30 percent or something like that.
 6 Q Maybe 60 percent?
 7 A 60/40 -- something like that -- yes.
 8 Q But the second question is, is it your
 9 understanding that the way TCEQ's rules works -- rules
 10 work with regard to revenue requirement, it's revenue
 11 requirement as a whole and not as to individual
 12 portions of the rate -- the noticed rates. Is that
 13 your understanding?
 14 A Yes. It's the total revenue requirement that
 15 we're looking into.
 16 Q Okay. All right. Let me switch subjects.
 17 CLARIFYING EXAMINATION
 18 BY JUDGE BENNETT:
 19 Q Well, I just want to clarify, because I think
 20 I understood you -- I think you clarified it for me
 21 just a moment ago, but I want to make sure I
 22 understand this.
 23 If you're looking on 103393, what you
 24 see there is, as you've indicated, a residential sewer
 25 proposed unphased rates of 52.80. Correct?

1 A Yes.
 2 Q But you see a non-residential sewer of 5/8ths
 3 by 3/4ths of proposed unphased rates of 67.55.
 4 Correct?
 5 A Yes.
 6 Q Your 55.89 calculation includes both those
 7 non-residential and residential. Is that correct?
 8 A Well, I guess my point was, we need to
 9 compare this 67.55 with my 55.89, because I didn't
 10 make any allocation for residential/non-residential.
 11 I calculated it overall, yes.
 12 Q Right. That's what I'm trying to clarify,
 13 because when I look on your Exhibit ED-KA-21-SE, which
 14 is essentially your rate design page, and you list a
 15 revenue generated summary, you have all 5/8ths and
 16 3/4's inch combined together under the 55.89 price
 17 structure?
 18 A That's right.
 19 Q Okay. So you're not breaking out residential
 20 versus non-residential?
 21 A No, I am not.
 22 Q Okay. But according, at least, to this page,
 23 it appears Aqua Texas under the original rate
 24 structure was?
 25 A Yes.

1 JUDGE BENNETT: Okay. I think that
 2 clarifies it.
 3 RECROSS-EXAMINATION (Cont'd)
 4 BY MR. TERRILL:
 5 Q Okay. Let me ask you to go back to the
 6 application to your depreciation schedules -- nothing
 7 in particular. Just find one in particular that you
 8 were discussing earlier with Ms. Gilkerson.
 9 A My schedule?
 10 Q Yes, sir. Just pick any representative one.
 11 It doesn't matter.
 12 A Okay. I have ED-KA-28 Southwest sewer,
 13 revised 8-18-06.
 14 Q Okay. Now, the way your schedules work, as I
 15 understand it, you've got -- when you depreciate an
 16 item there's two impacts.
 17 One impact is on rate base. As
 18 something ages you accumulate the depreciation in a
 19 way that it ultimately reduces invested capital. Is
 20 that correct?
 21 A That's correct.
 22 Q Okay. There's a second impact that comes off
 23 your depreciation schedules also and that is, the
 24 annual depreciation is an item that can be taken from
 25 that schedule and then taken over to the allowable

1 expenses, and so that impacts the allowable expenses
2 that Ms. Pascua has testified about.

3 Is that correct?

4 A That's correct.

5 Q Now, the annual depreciation for -- for an
6 item that was placed in service in 2003 would be just
7 a portion of that year. Correct?

8 A That's how it works, yes.

9 Q On a going-forward basis, though, for 2004,
10 that would be an annual amount, though. Correct?

11 A Yes.

12 Q And so the fact that it was pro rated in 2003
13 would not change the fact that Aqua Texas would be
14 entitled to the entire annual depreciation for, say,
15 2004. Is that correct?

16 A Can you say that one more time, please?

17 Q Okay. The annual depreciation for 2004 would
18 be a known and measurable change from 2003. Is that
19 correct?

20 A That's correct.

21 Q And that's true for 2005 also. Correct?

22 A Yes.

23 Q So, in other words, just because the
24 depreciation was a smaller amount for 2003 doesn't
25 mean that that 2003 amount is locked in for 2004 and

1 2005. Is that right?

2 A No. If you just change the date, like if you
3 go and put 12-31-04 where it says "Acquired Date,"
4 then you will get one year complete --

5 Q Okay. But as I understand how your schedules
6 work, you're only taking that pro rated amount for
7 2003 and then using that pro rated amount for 2004 and
8 2005 on the allowable expenses as well?

9 A Yes. The total number of that column goes to
10 the customer service item, yes.

11 Q Okay. So if you fixed that to the annual
12 amount for 2004 as a known and measurable change, that
13 would change the annual depreciation. Is that
14 correct?

15 A That's correct.

16 MR. TERRILL: No further questions, Your
17 Honor.

18 JUDGE BENNETT: Okay.

19 MS. GILKERSON: No questions. Thank
20 you.

21 MR. HUMPHREY: I have no questions
22 either.

23 JUDGE BENNETT: Does the ED have any
24 follow-up?

25 MR. GALIGA: Just a couple of real brief

1 things, Your Honor. I don't think this will take very
2 long.

3 FURTHER REDIRECT EXAMINATION

4 BY MR. GALIGA:

5 Q Mr. Adhikari, you were asked a while ago
6 about the two different water rate recommendations you
7 made for each region.

8 A Southeast and Southwest, yes.

9 Q In each region your testimony contains a
10 calculation with a base rate and a gallonage rate.
11 Correct?

12 A Yes.

13 Q And then there's also a separate base rate
14 and gallonage rate that you're actually recommending?

15 A Yes.

16 Q Could you explain why there are two different
17 rates that you're recommending?

18 A Yes, I can. Just one second.

19 Q And let me clarify that: Two different rates
20 in your testimony, one that you're recommending.

21 A Yes. Okay. How it works in our rates and
22 our process is the number of -- let's go to Page 19 of
23 my prefiled testimony, Exhibit ED-B. Page 19, Line 7.

24 Line 7 through Line 13 talks about
25 Southwest water rates. The way our specific design

1 is, once we have the total revenue requirement, then
2 it will divide into two parts. One is called
3 "variable cost" and one is called "fixed cost."

4 From the fixed cost we derive the base
5 rate and from the variable cost we derive the
6 gallonage rate.

7 And with all of our adjustments with the
8 final revenue requirement number, we do have some
9 standard portions of breakdown for the variable and
10 fixed costs.

11 With that we came up with 41.60 as a
12 base rate and 2.97 per thousand gallons as a gallonage
13 rate. Since Aqua Texas is asking for 3.61 per
14 thousand gallons and in my recommendation since I'm
15 not doing the tier rate in this case, I choose to go
16 to the higher gallonage rate to promote conservation.

17 And if I changed that 2.97 rate, which I
18 came up with based on our spreadsheet, to \$3.61, that
19 will result -- the lower base rate -- down to 36.09,
20 and that's what I'm recommending in this case.

21 Q So both rates generate the same annual
22 revenue?

23 A Exactly right, yes.

24 Q It's just a difference in rate structure?

25 A Yeah. We're just switching the numbers, but

1 the revenue requirement will be the same, yes.

2 Q You went with the higher gallonage rate in
3 order to promote conservation?

4 A That's one of the -- I took that in this
5 case, yes.

6 Q Just to clarify, your depreciation schedules
7 that you prepared, as you've discussed, those were
8 based on a number of factors. Correct?

9 A Yes.

10 Q And were things that you reviewed?

11 A That's correct.

12 Q They were not solely on your site
13 inspections?

14 A No.

15 MR. GALIGA: No further questions.

16 JUDGE BENNETT: Any follow-up questions
17 on Mr. Galiga's? Okay.

18 Then, with that, you're free to step
19 down. You may be excused. Thank you,
20 Mr. Adhikari.

21 WITNESS ADHIKARI: Thank you.

22 JUDGE BENNETT: And does the ED rest its
23 direct case at this time?

24 MR. GALIGA: Yes. With the exception of
25 the issue of rate case expenses, the ED rests.

1 JUDGE BENNETT: Okay.

2 Then, as I understand it, that will
3 conclude the portion of the hearing that we're
4 conducting today.

5 So with that, we'll go off the record
6 and we'll have some discussion about other matters.

7 (Discussion off the record)

8 (Proceedings recessed - 11:52 a.m.)

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