

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

March 22, 2011

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-08-2863; TCEQ Docket No. 2008-0093-UCR; In Re: APPEAL OF THE RETAIL WATER AND WASTEWATER RATES OF THE LOWER COLORADO RIVER AUTHORITY

Dear Mr. Trobman:

The Administrative Law Judge (ALJ) has reviewed the exceptions to his Proposal for Decision (PFD) and proposed Order. The ALJ recommends proposed Finding of Fact No. 137 be revised to read as follows:

137. Because this Order finds against LCRA on its use of the FY 2010 budget forecast and its use of relative volumes as an allocator, LCRA should not recover its rate case expenses in this case.

The revised Finding would delete the phrase, "and because this Order would lead to at least a significant reduction from LCRA's third-phase rates" from the original proposed Finding of Fact. Both the PFD and the proposed Order cited an anticipated reduction in LCRA's proposed rates as one reason for denying recovery of rate case expenses. The primary reason, however, was the ALJ's finding in favor of the Appellants on two contentious and complex issues: LCRA's use of its FY 2010 budget forecast to set rates and LCRA's use of volume as an allocator. Therefore, whether or not the Commission's decision would lead to a rate reduction, the ALJ finds LCRA should not recover those rate case expenses.

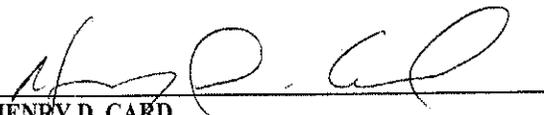
The ALJ recommends no other changes to the proposed Order.

In its Reply to Exceptions, LCRA requested clarification of two points. First, LCRA requested clarification as to whether the ALJ still recommends that certain costs excluded by Bee Cave witness Heddin should be excluded from the cost pools (LCRA's Reply, pages 7-8). The answer is "yes." The ALJ did not misunderstand Mr. Stowe's testimony; LCRA failed to meet its burden of proof regarding those costs.

Second, LCRA requested clarification as to whether, as set out in proposed Finding of Fact No. 109, the FY 2007 additional operations reserve amount of \$179,997 should be excluded. Again, the answer is "yes." As was discussed in the PFD, LCRA's operations reserves generally are debt-funded. Because of the ALJ's recommended decreases in WTC expenses, the additional amount should not be required.

Finally, the ALJ agrees that the PFD mischaracterized the Executive Director's position regarding excess capacity reserve funding (Executive Director's Exceptions, page 2). The ALJ apologizes for that error. Because that characterization was not set out in the proposed Order, no further correction is needed.

Sincerely,


HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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STYLE/CASE: LOWER COLORADO RIVER AUTHORITY
SOAH DOCKET NUMBER: 582-08-2863
REFERRING AGENCY CASE: 2008-0093-UCR

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HEARINGS**

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