SOAH DOCKET NO. 582-08-2863
TCEQ DOCKET NO. 2008-0093-UCR

APPEAL OF THE RETAIL WATER AND WASTEWATER RATES OF THE LOWER COLORADO RIVER AUTHORITY	**§ § § § §**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

WEST TRAVIS COUNTY MUD NOS. 3 AND 5's EXCEPTIONS TO THE PROPOSAL FOR DECISION

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TO THE HONORABLE COMMISSION:

COME NOW Appellants West Travis County Municipal Utility District Nos. 3 and 5 (the "Districts") and file this, their Exceptions to the Proposal for Decision ("PFD") filed by the Administrative Law Judge ("ALJ") in the above-captioned matter.

The Districts agree with the ALJs' findings that 1) the Lower Colorado River Authority ("LCRA") use of a forecast five years into the future to set rates was neither just nor reasonable, 2) the use of volume to allocate massive LCRA overhead costs to the ratepayers of the West Travis County ("WTC") systems was neither just nor reasonable, and 3) the Texas Commission on Environmental Quality ("Commission") should deny the LCRA request to recover any rate case expenses due its failure to justify its rates. However, since LCRA failed to meet its burden of proof that the proposed rates were just and reasonable under the Texas Water Code, the Commission must deny the ALJ's proposal for the parties to conjure up a new set of rates. LCRA provided insufficient evidence of the cost of service to support its rate increase, and LCRA did not convincingly establish that the amount of the rate increase was necessary for it to maintain its financial integrity. Therefore, the Commission should follow its prior precedent by reinstating the rates as they existed prior to August 22, 2007 and order LCRA to refund to ratepayers the total amount improperly collected in excess of the prior rates over a period of time not to exceed two years.

I.
SUMMARY

The Districts represent approximately 3,500 customers in the Lake Pointe subdivision.[1] These WTC ratepayers appealed the massive, three-phase rate hike that would unfairly force the average ratepayer to pay a 64% higher water and a 103% higher wastewater bill. Through the use of a Soviet-style, five-year planning process and an Enron-like allocation methodology, LCRA unjustly pushed its exorbitant overhead costs on to the Districts' ratepayers at 3 ½ times the actual operating costs for these small systems (*i.e.*, only 7 and 3 employees for its water and wastewater plants, respectively[2]) in an effort to subsidize other LCRA systems due to its ill-fated entry into the retail water and wastewater business across the Hill Country from the late '90s through the early 2000s.[3] This income redistribution (or "Robin Hood") scheme is unprecedented in Texas water utility law – LCRA has never used the multi-year forecasting or the volume reallocation schemes on any of its other systems (*i.e.*, the WTC systems would be the first). Furthermore, the LCRA approach for the WTC systems has never been used by any other retail public utility in the state nor reviewed by the Commission on any level. Moreover, WTC ratepayers are already paying "debt service" for future construction that LCRA never built – may never be built now according to the most recent LCRA divestment strategy. Finally, in the revenue requirements for the WTC water and wastewater systems, LCRA included unnecessary

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[1] Lake Pointe is located off RM 2244, near the City of Bee Cave, on the shores of Lake Austin.

[2] LCRA Exhibit JS-9.

[3] The LCRA management auditor found that "[t]o help finance the cost of these systems which could not cover their own costs, LCRA pursued a strategy to obtain and/or grow other water/wastewater utility systems in high growth markets **with the intention of having these growth markets generate sufficient revenue to cover their own operating and debt service expenses and help offset any losses of the system with more limited growth potential.**" LCRA Exhibit No. 14 ("BWG Audit")(emphasis added).

expenses for items like public relation campaigns and state-wide parks that have nothing to do with the provision of water and wastewater services and that are already adequately provided for by other state or federal agencies.

After four years, 30,000 documents produced in seven rounds of discovery, 170 hearing exhibits, and 11 volumes of transcripts of live testimony from 11 witnesses over 11 days of hearing, the ALJ is unable to affirm that LCRA rates are just and reasonable. LCRA failed to prove by a preponderance of the evidence that the rates, or the revenue requirements that are the basis for calculating the rates, are just and reasonable. As the Districts' ratepayers are entitled to closure of this long tortuous process, the Commission should overturn the LCRA rate increase in its entirety without leave to reopen the administrative record, and reinstate the rates in effect prior to the LCRA rate increase adopted August 22, 2007.

II.
EXCEPTIONS TO PROPOSAL FOR DECISION[4]

A. The ALJ ignored the Commission's findings in the *Chisholm Trail* and *North San Saba* cases, as LCRA did not use its Budget, after being shown to be a reliable forecast of anticipated expenses through comparison to Historic Test Year expenses, to establish the rates for the WTC Water or Wastewater System. Moreover, the ALJ ignored the Commission's finding in both the *North San Saba* and *Double Diamond Utilities* cases that the prior rates should be reinstated when the retail public utility failed to meet its burden of proof by not providing sufficient evidence of its cost of providing service to support the rate increase.

In *Chisholm Trail*, the Commission found that a retail public utility's annual budget is a reliable forecast of anticipated expenses **IF** the budget is **based on historic test year costs** and expenses, adjusted for known and measurable changes.[5] In *North San Saba*, because the Commission found that North San Saba Water Supply Corporation ("North San Saba WSC") failed to provide sufficient evidence of its cost of providing utility service to support its rate increase, the Commission ordered reinstatement of that retail public utility's rates as the rates existed prior to the increase.[6] In *Double Diamond Utilities*, the Commission found that the utility had failed to provide sufficient evidence of its costs of providing utility service to support its rate increase, and the Commission ordered reinstatement of the prior rates in this case as well.[7] The common thread between all these cases -- rate case appeals for retail public utilities

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[4] While these Exceptions do not dwell on those many areas for which the Districts and ALJ agree, some discussion of these issues is necessary to give the Commission a "big picture" view of the case.

[5] Order Denying the Ratepayer's Appeal of the Retail Water Rate Increase of Chisholm Trail Special Utility District; SOAH Docket No. 582-05-0003; TCEQ Docket No. 2004-0979-UCR; May 3, 2006 (hereinafter "CHISHOLM TRAIL ORDER"), at Finding of Fact No. 19 a., p. 4.

[6] Order Granting the Ratepayers' Appeal of the Retail Water Rates of North San Saba Water Supply Corporation; SOAH Docket No. 582-09-0660; TCEQ Docket No. 2008-1481-UCR; June 7, 2010 (hereinafter "NORTH SAN SABA ORDER"), at Finding of Fact Nos. 11 and 12, Ordering Provision No. 2.

[7] Order Denying the Application of Double Diamond Utilities to Increase Its Rates; SOAH Docket No. 582-08-0698; TCEQ Docket No. 2007-1708-UCR; November 12, 2009 (hereinafter "DOUBLE DIAMOND UTILITIES ORDER"), at Finding of Fact Nos. 29, 36.

(*Chisholm* and *North San Saba*) as well as an original appeal of an investor-owned-utility (*Double Diamond*) -- is that reliable budgeting will prevail and failure to substantiate costs and rates in the record will not. The Commission should not deviate from this consistent precedent.

Unfortunately, while the ALJ acknowledges that rates may be set on a retail public utility's budget if the budget is shown to be a reliable forecast of anticipated expense,[8] he then dismisses the ONLY methodology that the Commission has previously approved for proving the reliability of a budget – a budget based on historic test year costs adjusted for known and measurable changes.[9] Ironically, after dismissing the Commission's test year findings in *Chisholm Trail*, the ALJ ultimately states that LCRA should have based its rates in this case on data from exactly that, historic test year data from FY 2007 adjusted for changes.[10] It is axiomatic that the only way to show a budget to be a reliable forecast of anticipated expenses is if that budget is based on previous, actual expenditures adjusted for known and anticipated increases for the upcoming year. However, LCRA freely admits that it did not develop its revenue requirements for any of the rates based on any historic test year data adjusted for known and measurable changes.[11] Thus, it is not surprising that the ALJ found it impossible to determine a revenue requirement or just and reasonable rates,[12] because the LCRA failed to meet its burden of proof. LCRA failed to provide sufficient evidence of its cost of providing utility

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[8] The ALJ correctly acknowledges that the neither the FY 2010 forecast (that LCRA used) nor the FY 2008 budget (favored by the Executive Director) was a reliable forecast of anticipated expenses upon which to design rates in September 2006 for LCRA adoption in August 2007. *See* PFD at 19 and 21.

[9] PFD at 16-17.

[10] *Id.* at 21.

[11] Tr. at 1639:5-12.

[12] PFD at 67.

service to support its rate increase. However, instead of recommending that the Commission reinstate the rates as the rates existed prior to the August 2007 increase, consistent with the Commission's recent *North San Saba* and *Double Diamond Utilities* decisions, the ALJ asks the Appellants to conjure up a new revenue requirement and a rate design in the absence of acceptable rates proposed by LCRA, which would improperly shift the burden to the other parties.[13] The ALJ mistakenly claims that the Commission must set a rate different than what existed prior to LCRA increasing rates,[14] and he asks the parties to guess what that rate should be when an acceptable result is already available that would not require departing from prior Commission precedent.

The Commission has already rejected this approach twice in both *North San Saba* and *Double Diamond Utilities*. Just as in this case, the *North San Saba* case was an appeal under Section 13.043 of the Texas Water Code of the rates set by a retail public utility.[15] In *North San Saba*, the ALJ acknowledged that although the retail public utility had failed to provide sufficient evidence to support the increase, a new revenue requirement and a rate could have been calculated from the information then available in the record (*i.e.*, known increase in wholesale water costs could be added and a final rate calculated),[16] yet the ALJ declined to give the North

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[13] *Id.*

[14] *Id.* at 20.

[15] North San Saba WSC is a non-profit retail public utility like LCRA, both are governed by the Texas Water Code, both sell water and wastewater service for compensation and neither entity presented a cost of service or revenue requirement based on an historic test year adjusted for known and reasonable changes.

[16] PROPOSAL FOR DECISION in the Appeal of the Retail Water Rates of North San Saba Water Supply Corporation; SOAH Docket No. 582-09-0660; TCEQ Docket No. 2008-1481-UCR;March 25, 2010, at 8.

San Saba WSC another bite of the apple,[17] and recommended reinstatement of the old rates.[18] The Commission agreed in its Order.[19]

Likewise, in *Double Diamond Utilities,* after finding that the utility failed to provide sufficient evidence to support the rate increase and despite the fact that she directed the parties to go through the exercise of developing a new revenue requirement,[20] the ALJ ultimately recommended the reinstatement of the old rates consistent with *North San Saba*.[21] Again, the Commission agreed, and found that the rates existing prior to the increase should be reinstated.[22]

To be consistent with its prior decisions and because the ALJ found that LCRA failed to meet its burden of proving a revenue requirement or just and reasonable rates,[23] LCRA failed to meet its burden of proof. The Commission should reinstate the water and wastewater rates as those rates existed prior to August 22, 2007.

B. Commission should not allow LCRA a second chance to repair its deficient record at the expense of Appellants

The ALJ invites the parties to engage in a similar exercise of recommending a new revenue requirement and rates. However, the ALJ's proposal is problematic, as there is precious little actual FY 2007 data in the record, insufficient to support either a new revenue requirement

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[17] *Id.* at 7 and 9.

[18] *Id.* at 9.

[19] NORTH SAN SABA ORDER, at Finding of Fact Nos. 11 and 12, Ordering Provision No. 2.

[20] PROPOSAL FOR DECISION in the Double Diamond Utilities Application to Increase Its Rates; SOAH Docket No. 582-08-0698; TCEQ Docket No. 2007-1708-UCR; June 15, 2009, at 27.

[21] *Id.* at 103.

[22] DOUBLE DIAMOND UTILITIES ORDER, at Finding of Fact No. 36.

[23] *Id.* at 67.

or rates. As it pertains to the revenue requirement, the only actual FY 2007 cost data in the record exists in summary fashion and lacks any underlying information to substantiate its reliability – that is, whether the costs were reasonable or necessary. The LCRA rate consultant, Mickey Fishbeck, did not audit the LCRA data to ensure accuracy[24] nor determine whether the costs were actually incurred in providing water or wastewater service to the WTC systems.[25] The record is also void of any evidence of the actual costs to provide service to the different classes of customers. These flaws and omissions make it impossible to develop a revenue requirement based on the FY 2007 actual costs, inclusive of the ALJ's recommended adjustments, as the ALJ requests.

Even more difficult would be any attempt to develop rates, as the record is completely void of any evidence of the actual number of customers, measured in living unit equivalents ("LUEs"), who were provided service for each class of customers. Also lacking is the actual water usage, the actual revenue earned for the each class of customers from rate revenue, or the actual non-rate revenue collected in FY 2007. Actual information necessary to calculate rates is not only absent in the administrative record, but despite repeated requests by the Appellants, LCRA refused to provide this information during the discovery phase of this hearing, which legally bars later introduction of this evidence into the record during or after the hearing.[26]

As discussed above, neither North San Saba WSC nor Double Diamond Utilities were provided a "second bite of the apple" to supplement the record with information that might have supported the rate increases and, instead, the Commission overturned those rate increases in their

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[24] Tr. at 1368:17-22; Tr. at 1370:13-16.

[25] Tr. at 1369:1-4.

[26] TEX. R. CIV. P. 193.6.

entirety.[27] In the *Double Diamond* case, in particular, the ALJ argued correctly that the record lacked evidentiary proof to support the rate increase, that the applicant should not benefit from a failure to meet its burden of proof.[28] Further, the Executive Director not only pointed out that allowing the utility to introduce new evidence to support the rates was untimely and specifically prohibited by the Administrative Procedure Act,[29] but it would also be unfair to the other parties, as it would deprive them of the opportunity to question witnesses or present any evidence in response.[30]

The Executive Director's "too little too late" argument is equally applicable here – as LCRA knew quite well through its rate increase for its Hill Country Region system that LCRA could and should present actual FY 2007 costs to support the revenue requirement and rates. [31] LCRA not only knew it would have to demonstrate that its budget was a reliable forecast of anticipated expenses from this prior experience, but it had been specifically warned that it would need to use an historic test year to set rates by its 26-year expert:

> If the Authority were to be confronted with a water or wastewater rate challenge**,** ***it would be required by the TCEQ to present a cost of service study based on a "test year,"*** or a historical year for which actual utility costs are known and are supported by audited cost figures.[32]

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[27] NORTH SAN SABA ORDER, Finding of Fact No. 12; Conclusion of Law No. 3; DOUBLE DIAMOND UTILITIES ORDER, Finding of Fact Nos. 41 and 42; Conclusion of Law Nos. 29 and 32.

[28] [28] PROPOSAL FOR DECISION in the Double Diamond Utilities Application to Increase Its Rates; SOAH Docket No. 582-08-0698; TCEQ Docket No. 2007-1708-UCR; June 15, 2009, at 102; EXECUTIVE DIRECTOR'S REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION, at 3.

[29] TEX. GOV'T CODE ANN. § 2001.141(c) (Vernon 2008) (stating findings of fact may only be based on the evidence).

[30] EXECUTIVE DIRECTOR'S REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION in the Double Diamond Utilities Application to Increase Its Rates; SOAH Docket No. 582-08-0698; TCEQ Docket No. 2007-1708-UCR; , at 3, 5-7.

[31] BC Ex. 72, p. 2; Tr. at 144:6-8.

[32] LCRA Exhibit SZ-7, at 3 (emphasis added).

Despite its prior ratemaking experience for the Hill Country Region system and expert advice, LCRA elected to put forth its novel volume allocation and multi-year budget concepts, never before used or reviewed by TCEQ, instead of actual FY 2007 data. LCRA did not even attempt to "sneak in" actual FY 2007 data through its rebuttal case, its Closing Arguments, or its Reply to Closing Arguments, and LCRA did not request leave from the Court to supplement its case during the hearing. Any opportunity to reopen this record now and supplement it with actual 2007 data to determine a new revenue requirement and rates is not consistent with prior Commission precedent and should be foreclosed.

Appellants, through great costs to themselves, have proven to the ALJ that LCRA failed to provide evidence to substantiate its revenue requirement and rates. To be consistent with its prior decisions, the Commission should reinstate the water and wastewater rates as those rates existed prior to August 22, 2007. If LCRA wishes to now use reliable data to calculate its rates, it certainly may – for an increase in rates to go into effect sometime in the future.

C. The ALJ ignored substantial evidence in the record that operation and maintenance expenses charged by LCRA to the WTC Systems were not just, reasonable, or useful in providing service.

The highest cost of service for operation and maintenance expenses as shown in the FY 2007 General Ledger for water was the ***overhead*** that LCRA allocated down to the WTC water system, which totaled ***$3,438,823, or 53.51%***, of the total operation and maintenance expenses.[33] On top of that overhead, LCRA allocated an ***additional $508,065*** in net corporate overhead, which represents another 7.91% of the total operation and maintenance expense. These two LCRA overhead items account for ***a total of $3,946,888 or 61.42%*** of the claimed operation and

[33] WTC Exhibit No. 1, at 46.

maintenance expense for providing water service to the WTC water system in FY07. LCRA projected the WTC water system would have 4,246 water customers in FY 2007.[34] With an overhead expense of $3,946,888, LCRA has allocated overhead expenses at an annual cost of $929.55 per customer per year or ***$77.46 per customer per month***.[35] For the WTC wastewater systems, LCRA allocated total overhead expenses in FY 2007 of $437,779, which results in a annual cost to wastewater customers of $279.59 per customer per year or $23.30 per customer per month.[36]

Yet, despite these exorbitant allocations of LCRA overhead costs, the ALJ claims in his PFD that the operation and maintenance expenses in the underlying cost pools were just, reasonable, and useful in providing water and wastewater utility service to WTC ratepayers.[37] However, this finding is unsupported, because the record lacks sufficient evidence about the underlying costs charged to each cost pool.

In *Chisholm Trail*, the Commission found that for a retail public utility's rates to be just and reasonable, the costs and expenses must be reasonable and necessary and be incurred only for the provision of utility service.[38] However, LCRA failed to introduce evidence that all of the expenses included in its cost of service study were just, reasonable, or necessary for the provision of water or wastewater services.[39]

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[34] LCRA Exhibit SZ-7.

[35] WTC Exhibit No. 1, at 52.

[36] *Id*. at 60.

[37] PFD at 41.

[38] CHISHOLM TRAIL ORDER at Finding of Fact 19 b. and d., p. 4.

[39] Tr. at 40:16-18.

Significantly, LCRA witnesses testified that LCRA had not reviewed every expense to determine whether the costs were reasonable.[40] The LCRA rate consultant neither reviewed nor audited the LCRA data to determine whether any of the included costs were just, reasonable, or necessary.[41] Moreover, this same witness testified that she did not make any effort to determine whether the costs were actually incurred in providing water or wastewater service to the WTC systems.[42] Also, LCRA management never reviewed historical expenditures during the business planning process,[43] never bothered to review expenditures included in the budgeting process,[44] and never reviewed the expenses included in the WTC general ledger.[45] Not surprisingly, LCRA management lacked any personal knowledge of whether the costs were reasonable or necessary for the provision of water or wastewater service.[46] The "architect" of the new LCRA allocation methodology, Stephen Kellicker, also acknowledged that he had not reviewed the individual charges that were allocated to the WTC systems through the cost allocation pools, and he did not know which costs were necessary for the provision of water or wastewater service.[47] This same witness was unable to identify how much of any specific cost item was necessary for the

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[40] Tr. at 40:20-22.

[41] Tr. at 1368:17-22; Tr. at 1370:13-16.

[42] Tr. at 1369:1-4.

[43] Tr. at 210:16-21.

[44] Tr. at 240:5-14.

[45] Tr. at 210:24-211:1.

[46] Tr. at 332:21-24; 827:5-18; 606:2.

[47] Tr. at 1196:19-1197:7. As the PFD correctly points out, Mr. Kellicker has no experience with water/wastewater systems operations. PFD at 29.

provision of utility service to the ratepayers of the WTC systems,[48] and did not know how much of any individual cost item was allocated to the WTC systems.[49]

Through its budgeting process, LCRA also included costs in its revenue requirement that will never be paid during any one year. For example, because LCRA uses the accrual method of accounting for its benefits, LCRA includes within the revenue requirement the *total accrued* sick, vacation, and holiday cost for each employee, not the actual expense incurred for benefits during the year.[50] In other words, if an employee has accrued 1,000 hours of sick time during the employee's entire career with LCRA, then LCRA includes the total charge for that total of accrued sick leave, or the full 1,000 hours during the subject year in this example, not the *actual* amount used by the employee during that same year. The ALJ erroneously concluded that these types of costs were reasonable

Another unsubstantiated cost was a raw water reservation fee for the provision of water or wastewater service to the WTC ratepayers. LCRA failed to enter any evidence into the record of the actual amount of water reserved for the WTC system or the price for the reserved water.[51] LCRA merely provided a total charge in its FY 2007 General Ledger, and LCRA failed to provide a basis for the charge. Moreover, while the LCRA witness Travis testified that LCRA was selling raw water to itself for the WTC systems, he did not know whether LCRA was charging itself the same rate it charged other customers or how the fee was calculated.[52]

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[48] *See e.g.*, Tr. at 1185:5-10; Tr. at 1311:10-19.

[49] Tr. at 1312:12-18.

[50] WTC Exhibit No. 54, at 53, RFA 16; Tr. at 809:18-21.

[51] WTC Exhibit No. 1, at 75:14-17.

[52] Tr. at 707:14-20.

LCRA did not offer any evidence into the record regarding how the raw water fees were calculated or allocated to the WTC ratepayers. Even the LCRA witness who testified on the subject did not know if LCRA was charging itself the same rate it charged other customers or how the amount was determined.[53]

As LCRA failed to introduce any evidence of whether the expenses were just, reasonable, and useful in providing water and wastewater utility service to the WTC ratepayers, the Commission should overrule the ALJ's findings of fact and conclusions of law regarding operation and maintenance expenses.

D. ALJ ignored substantial evidence in the record that the debt service charges assigned by LCRA to the WTC Systems were not reasonable.

Insufficient evidence exists in the record to support the ALJ's claim that the debt service allocated to the WTC was reasonable. LCRA allocated its debt service costs for the WTC water system based on a percentage of relative plant investment.[54] For each fiscal year, LCRA calculated the percentage of wholesale investment to the total amount invested in the WTC systems.[55] LCRA even calculated the percentage of debt service to allocate to wholesale and retail customers for FY 2007 – 2010 and provided these percentages to Ms. Fishbeck for use in her cost of service study.[56] But Ms. Fishbeck did ***not*** use these allocations derived and provided to her specifically by LCRA in her cost of service study to allocate debt service. Instead, she used the percentage allocation shown for FY 2006 for all future years, intentionally ignoring the

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[53] *Id.* at 707:14-20.

[54] *Id.* at 1232:15-16.

[55] *See e.g.* LCRA Ex. SZ-7, Table 8W, at 86.

[56] Tr. at 1349:19-1350:4; LCRA Ex. MF-13 at 6.

actual data available for FY 2007 – 2010.[57] By doing so, the amount of debt service for the water system allocated to retail customers was inflated in FY 2007.

For the WTC wastewater system, the record reflects that a significant portion of the debt service allocated to the WTC ratepayers was unrelated to providing service to Appellants. The Districts' rate consultant identified $14,493,252 in wastewater facility costs assigned to the WTC system that were not related to the provision of wastewater service to the Appellants, but rather, were directly related to developer projects geared to grow the presence of LCRA in the Hill Country presence and not directly necessary to provide wastewater service to the ratepayers.[58] Specifically, these projects were to fund new developments such as Falconhead (Palisades & Spillman), Spanish Oaks, and the Hill Country Galleria. The evidence in the record supports a decrease in the wastewater debt service allocated to the ratepayers from $1,857,034 per year to $1,030,130.

As LCRA failed to introduce evidence to support whether the debt service charged to the ratepayers was just, reasonable, and useful in providing water and wastewater utility service, the Commission should overrule the ALJ's findings of fact and conclusions of law regarding debt service.

E. ALJ ignored substantial evidence in the record that LCRA included excess funds for debt service coverage in calculating the revenue requirement for the WTC water and wastewater systems.

Insufficient evidence exists in the record to support the ALJ's finding that the debt service coverage allocated to the WTC water and wastewater systems was reasonable. Debt

[57] Tr. at 1409:2-5.

[58] WTC Exhibit No. 1, at 91:9-13; District Exhibit DGR-25.

service coverage is not an actual expense incurred by a retail public utility.[59] Instead, debt service coverage is merely a calculation to determine whether a retail public utility has sufficient revenue to cover its operating expenses, its debt service expense, and a reserve amount in case of revenue shortfalls.[60] According to LCRA Policy 301 and to its bond covenants, the revenue used to calculate the debt service coverage amount is the total amount of revenue available, not just rate revenue.[61] The amount of excess revenue, or debt service coverage, necessary to meet the LCRA bond covenants is ***not*** simply 25 percent of the debt service for the WTC systems, as claimed by the ALJ.[62]

Not only did LCRA miscalculate the debt service coverage, LCRA used the wrong debt service amount in calculating the necessary excess revenue, or debt service coverage. As shown above, LCRA included an excess amount of debt service in its calculations of the revenue requirements for the WTC systems, which had nothing to do with the provision of water and wastewater services to the WTC ratepayers. As debt service coverage is a function of debt service, LCRA included an excess amount of debt service coverage in the revenue requirements for the WTC systems.

Furthermore, the record is clear that LCRA failed to include all revenue in its calculation of the amount of revenue available to cover its debt service coverage obligation.[63] LCRA

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[59] WTC Exhibit No. 50, at 34.

[60] *Id.* "Coverage requirements are a test of the adequacy of utility revenues and do not represent a specific cash requirement or funding obligation. The coverage requirements are intended to provide a measure of security for bondholders, and must be considered in determining the total annual revenue needed."

[61] LCRA Exhibit JT-7.

[62] PFD at 50.

[63] PFD at 53.

collected $3,590,325 in impact fees for the WTC water system and $505,924 for the WTC wastewater system, but did not include this revenue as part of the total revenue used to calculate debt service coverage, as required by LCRA Policy 301 and the bond covenants for LCRA. The ALJ incorrectly argues that because LCRA used this revenue for other expenditures besides operating expenses and debt service, LCRA should not include impact fees in the calculation of excess revenue (*i.e.*, debt service coverage). The ALJ ignores LCRA Policy 301 and the LCRA bond covenants. LCRA is required to include **ALL** revenue, including impact fee revenue, in calculating whether total revenues meet the debt service coverage.

The ALJ further argues that because LCRA cash-funds projects with impact fees, then impact fees should not be included as part of total revenue for the WTC systems. Again, this argument ignores the fact that debt service coverage is a ratio of total revenue to the cost of operating expenses and debt service. Cash funding projects is neither an operating expense nor debt service.

Importantly, LCRA cash funding projects with impact fees is also illegal. Section 395.012 (b) of the Texas Local Government Code is quite clear:

> Projected interest charges and other finance costs may be included in determining the amount of impact fees **ONLY IF** the impact fees are used for the payment of principal and interest on bonds. …[64]

The reason for this requirement is plain. If a government utility calculates its impact fee so that it may pay interest on its bonds for construction project with money collected from impact fees, then the government utility must use the collected money for the impact fees to pay that interest charge. Otherwise, if the government utility were to cash fund projects with impact fees that

[64] TEX. LOCAL GOV'T CODE ANN. §395.012(b)(emphasis added).

included an interest charge, then the government utility would receive payment for charges the utility did not incur or an improper windfall from not paying the interest when the utility had committed to paying that interest with the collected money. Nevertheless, LCRA freely admits that it is violating this law.[65] LCRA included interest in its calculation of the impact fee for the WTC system,[66] but it is cash funding projects with the funds anyway. And, even though impact fees are non-rate revenue,[67] LCRA improperly omitted its projected income from impact fees when it calculated the debt service coverage for the WTC systems.[68]

LCRA failed to introduce evidence to support whether the debt service coverage amount charged to the ratepayers was just, reasonable, and useful in providing water and wastewater utility service, and the actual evidence in the record shows that the methodology to calculate debt service coverage was flawed; therefore, the Commission should overrule the ALJ's findings of fact and conclusions of law regarding debt service coverage.

F. Community Development costs are unreasonable

The Districts disagree with the ALJ that Community Development expenses are reasonable costs, since LCRA is both "authorized and expected to engage in the non-revenue-generating types of expenses covered by the Community Development funds."[69] There is no evidence in the administrative record, no witness offered to opine what the legislative goals of the LCRA enabling legislation were and certainly no language in Section 8503.004 of the

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[65] Tr. at 763:10-16.

[66] LCRA Ex. KP-4; Tr. at 764:17-765:4.

[67] WTC Ex. 40; WTC Ex. 46; Tr. at 834:3-7; Tr. at 1165:13-16.

[68] LCRA Ex. SZ-7 at 41; Tr. at 1402:17-21.

[69] PFD at 58.

Special Districts Local Laws Code stating what community development activities LCRA is "expected" to undertake.

What we do know is that LCRA has absolutely no legal obligation to forest or reforest erosion areas, study artificial pollution, develop recreational facilities and science labs which are all wholly unrelated to the provision of water and wastewater services to WTC customers[70] and which are duplicative of services already provided by other governmental agencies (*i.e.*, Texas Parks and Wildlife Department provides park maintenance). The only true duty imposed by statute is that LCRA only charge the actual cost of sewage treatment and disposal services.[71] Furthermore, LCRA witness Jack Stowe acknowledged that these costs are not properly included within a reasonable cost of service for recovery through just and reasonable water or wastewater rates.[72]

G. Non-Rate Revenues

The ALJ mistakenly recommends that LCRA should not be required to include an excess capacity revenue contribution in its non-rate revenues. According to Mr. Kellicker, LCRA lowered the revenue requirement via an excess capacity reduction, as LCRA constructed excess capacity not necessary for the provision of water or wastewater service to the existing ratepayer, but rather the excess capacity in infrastructure was for the benefit of future customers, not existing customers.[73] It is patently unreasonable for current WTC customers to pay for infrastructure not necessary to provide service.

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[70] SPEC. DIST. LOC. LAWS CODE §8503.004.

[71] SPEC. DIST. LOC. LAWS CODE §8503.004(r).

[72] Tr. at 1515:17-1516:13.

[73] *Id.* p. 28:25-26.

As Mr. Kellicker testified, the excess capacity credit is to ensure that existing customers do not pay for excess capacity built to serve future customers. More importantly, the LCRA Impact Fees are also designed for future customers to pay for that future capacity. By deleting the excess capacity credit, the ALJ would allow LCRA to collect for the construction of the future capacity twice: once through rates charged to existing customers and once through impact fees collected from future customers.

H. Rate Design

The ALJ admits that he is cannot determine the just and reasonable revenue requirement or the rates; therefore, he has left the ordering provisions of his Proposed Order blank.[74] The ALJ then recommends that if the Commission does not reinstate the old rates, then the rate design should follow the design set out by the Executive Director's witness, Ms. Graham, in her testimony.[75]

Unfortunately, Ms. Graham did not recommend using the actual data upon which the ALJ insists using. She did not use the actual number of gallons billed or the actual number of LUEs, or connections, for FY 2007 to calculate the water and wastewater rates. Instead, she recommended using projections for the total number of gallons billed and a projection of LUEs to design the rates.[76]

To be consistent, any rate design for FY 2007 should be based on the actual number of gallons billed and customers served during FY 2007. Therefore, LCRA has again failed to meet

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[74] PFD at 61.

[75] *Id.*

[76] ED Exhibit No. 2, at 6.

its burden of proof, and the Commission should reinstate the water and wastewater rates as those rates existed prior to August 22, 2007.

III.
EXCEPTIONS TO SPECIFIC FINDINGS OF FACT

A. Finding of Fact Nos. 12, 13, and 14

The ALJ's statements in Finding of Fact Nos. 12, 13, and 14 are not supported by the preponderance of the evidence in the record. In Finding of Fact No. 12, for example, the ALJ states that the WTC water system served approximately 4,200 retail water meters and seven wholesale meter connections at the end of FY 2007. In Finding of Fact No. 13, the ALJ states that the WTC water system served approximately 7,600 LUEs at the end of FY 2007, consisting of about 2,200 wholesale LUEs and about 5,400 retail LUEs at the end of FY 2007. In Finding of Fact No. 14, the ALJ states that the WTC wastewater system served approximately 1,700 LUEs at the end of FY 2007. However, the evidence in the record does not support any of these statements, as LCRA failed to introduce into the record any evidence of the actual number of LUEs served by these two systems at the end of FY 2007.[77]

The actual number of LUEs served at the end of FY 2007 is unknown and not in the record. What is in the record is evidence that LCRA merely introduced *projections* of LUEs served, not the actual number of LUEs served. In her testimony, Ms. Fishbeck testified that her "cost of service study" prepared on behalf of LCRA included only projections, including estimates of the number of LUEs for these systems, and these estimates were prepared by LCRA.[78] Moreover, Ms. Fishbeck's study was prepared in September 2006,[79] which makes it

[77] Neither the PFD nor proposed order provides citations to the record to substantiate these numbers.

[78] Tr. at 1331:19-24; LCRA Ex. 5, pp. 15:27-16:25.

impossible for the ALJ to include any accurate number of LUEs at the end of FY 2007 as proposed in Finding of Fact Nos. 12, 13, and 14.

For the reasons above, the Commission should strike Finding of Fact Nos. 12, 13, and 14.

B. Finding of Fact Nos. 36, 37, and 41

The ALJ's statements in Finding of Fact Nos. 36, 37, and 41 are not supported by the preponderance of the evidence in the record. The ALJ's Finding of Fact No. 36 states that the revenue requirements for FY 2007-2010 were based on the LCRA budgets for those fiscal years. The ALJ's Finding of Fact No. 37 states that LCRA set its revenue requirement in August 2007 on the FY 2010 budget. The ALJ's Finding of Fact No. 41 states that each year LCRA adopts a five-year budget.

However, during testimony presented during the hearing, LCRA witnesses admitted that the rates were not based on an annual budget, as the LCRA Board did not review the WTC system budgets when the LCRA Board approved either the FY 2007 LCRA Business Plan or the WTC rates for the systems. When the Board approved the FY 2007 LCRA Business Plan in June 2006, the Board merely approved the LCRA Annual Budget for FY 2007, but the LCRA FY 2007 Business Plan did not include any budgetary information for either of the WTC water or wastewater systems.[80] And when the LCRA Board approved the WTC rates in August 2007, the Board simply reviewed the items attached to the Board agenda packet,[81] which did not

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[79] LCRA Ex. SZ-7, p. 2.

[80] Tr. at 225:5-10 (Ms. Zarling states, "it doesn't have specific information about each of the systems below that.").

[81] Tr. at 190:15-20.

include the WTC system budgets, the Rimrock Cost of Service Study, or the WTC system revenue requirements.[82]

For the reasons above, the Commission should strike Finding of Fact Nos. 36, 37, and 41.

C. Finding of Fact No. 45

The second sentence in Finding of Fact No. 45 is not supported by the preponderance of the evidence in the record and should be modified, because there was no supporting documentation that FY 2007 data "would result in slightly higher rates than the FY 2010 data, because the higher revenue requirement in FY 2010 was mitigated by the anticipated growth in connections." The record lacks any evidence of number of actual connections or actual water usage in 2007. Moreover, the record lacks any calculations to support Ms. Flores unsupported statement.

Instead, the Commission should strike the second sentence in Finding of Fact No. 45.

D. Finding of Fact No. 51

The ALJ's statements in Finding of Fact No. 51 are not supported by the preponderance of the evidence in the record. Finding of Fact No. 51 should be modified to read that, "In the absence of a reliable budget adopted close in time to the actual rate increase, LCRA's actual FY 2007 data *should have been* the starting point for ratesetting in this case." Again, LCRA has had four (4) years litigating this case at ratepayer expense and the administrative record should not be reopened to allow a second bite of the apple when LCRA could have used actual data, as LCRA had chosen for its other rate designs.

For the reasons above, the Commission should amend Finding of Fact No. 51.

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[82] Tr. at 192:20-23; Tr. at 964:14-16.

E. Finding of Fact No. 76

The ALJ's statements in Finding of Fact No. 76 are not supported by the preponderance of the evidence in the record and should be modified, because LCRA did not present data for FY 2007 other than a summary of costs.[83] There is no underlying evidence in the record that either supports the LCRA budget projections or anticipates objections by Appellants. As Ms. Fishbeck explained, there is no historical or actual information in the record, except "historical financial data used for reference and to examine whether rate revenues had been adequate to recover costs in historical years."[84]

For the reasons above, the Commission should strike Finding of Fact No. 76.

F. Finding of Fact Nos. 77 and 79.

The ALJ's statements in Finding of Fact Nos. 77 and 79 are not supported by the preponderance of the evidence in the record. In Finding of Fact No. 77, the ALJ states that LCRA included the total cost of leave for a year in developing its budget. In Finding of Fact No. 79, the ALJ mistakenly claims the LCRA benefit account was accurate.

As shown above, LCRA did not include only the cost of leave incurred during any one given year, but included the total cost of all leave benefits accrued, which are never used for all employees in any one year. The record lacks any evidence that LCRA benefit accounting is accurate.

For the reasons above, the Commission should strike Finding of Fact Nos. 77 and 79.

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[83] LCRA Ex. SK-4.

[84] LCRA Exhibit No. 5, at 7.

G. Finding of Fact Nos. 80, 81, through 82.

Finding of Fact Nos. 80, 81, and 82 are not supported by the preponderance of the evidence in the record and should be stricken or modified, because LCRA construction and engineering staff improperly billed for one-time, non-recurring capital projects as if the projects were repetitive work.

LCRA also included the costs of non-recurring, one time projects within the FY 2007 General Ledgers. Capital projects of this kind are non-recurring, one-time projects which, according to LCRA's own Board policy regarding capitalization, should be amortized,[85] not pooled and allocated by volume as O&M costs to the WTC ratepayers. The BWG audit echoed this policy by stating that LCRA should ensure 100% developer funding of new infrastructure – a recommendation which LCRA ignored.[86] Finally, LCRA witness Kelly Payne verified that the same inspector[87] or engineer[88] entries in the ledger that Mr. Rauschuber reviewed (and the departmental categories or job titles for which the ALJ and LCRA complain) were in fact construction costs related to a discrete, one-time projects, and were not recurring costs that should be included in a rate design. Inclusion of one-time costs in a revenue requirement would artificially raise the revenue requirement and the associated rates.

For the reasons above, the Commission should strike Finding of Fact Nos. 80, 81, and 82.

H. Finding of Fact No. 90.

The ALJ's statements in Finding of Fact No. 90 are not supported by the preponderance

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[85] LCRA Exhibit JT-9.

[86] WTC Ex. 18; Tr. at 325:9-328:24.

[87] Tr. at 525:14-17; Tr. at 526:21-527:2; Tr. at 531:13-15.

[88] Tr. at 525:18-20; Tr. at 533:3-10.

of the evidence in the record. In this Finding of Fact, the ALJ states that the operation and maintenance expenses were just, reasonable, and useful for providing service, yet, as shown above, LCRA failed to enter any evidence into the record to support this claim. On their face, the operation and maintenance expenses allocated to the WTC systems in FY 2007 are patently excessive, including overhead costs that are three and one-half times the actual operating expenditures. Moreover, the ALJ failed to follow the Commission's directive in *Chisholm Trail* by ensuring that all of the costs and expenses were reasonable and necessary and were tied to the provision of utility service only.[89] LCRA witness after witness testified that LCRA had not reviewed every expense to determine whether the costs were reasonable,[90] had not audited the LCRA data,[91] and had not made any effort to determine whether the costs were actually incurred in providing water or wastewater service to the WTC systems.[92] LCRA management never reviewed historical expenditures during the business planning process,[93] never bothered to review expenditures included in the budgeting process,[94] and never reviewed the expenses included in the WTC general ledger.[95] LCRA management lacked any knowledge of whether the costs were reasonable or necessary for the provision of water or wastewater service.[96]

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[89] CHISHOLM TRAIL ORDER at Finding of Fact 19 b. and d., p. 4.

[90] Tr. at 40:20-22.

[91] Tr. at 1368:17-22; Tr. at 1370:13-16.

[92] Tr. at 1369:1-4.

[93] Tr. at 210:16-21.

[94] Tr. at 240:5-14.

[95] Tr. at 210:24-211:1.

[96] Tr. at 332:21-24; 827:5-18; 606:2.

For the reasons above, the Commission should strike Finding of Fact No. 90.

I. Finding of Fact Nos. 94 and 95.

Finding of Fact Nos. 94 and 95 are not supported by the preponderance of the evidence in the record. While a raw water reservation fee or a raw water charge may be an appropriate expense for inclusion in a revenue requirement, LCRA never entered any evidence into the record to support these claims asserted by the ALJ. Not only did LCRA fail to enter any evidence into the record of the actual amount of water reserved for the WTC system or the price for the reserved water,[97] the LCRA witness testified he was unaware whether LCRA was charging itself the same rate it charged other customers or how the fee was calculated.[98] Furthermore, LCRA did not offer any evidence into the record regarding how the raw water fees were calculated or allocated to the WTC ratepayers.

For the reasons above, the Commission should strike Finding of Fact Nos. 94 and 95.

J. Finding of Fact No. 97

The ALJ's statements in Finding of Fact No. 97 are not supported by the preponderance of the evidence in the record and are simply incorrect. Beside revenue from operation fees and proceeds from debt issuance, LCRA may and does acquire revenue from the collection of impact fees authorized under Chapter 395 of the Texas Local Government Code.

For this reason, Finding of Fact No. 97 should be revised to state, "LCRA has three sources of revenue: operational fees charged to customers, proceeds from debt issuance, and the collection of impact fees from future customers."

[97] WTC Exhibit No. 1, at 75:14-17.

[98] Tr. at 707:14-20.

K. Finding of Fact Nos. 104 and 105.

Insufficient evidence exists in the record to support the ALJ's claim that the debt service allocated to the WTC was reasonable. LCRA allocated its debt service costs for the WTC water system based on a percentage of relative plant investment,[99] but based the calculation on the incorrect percentage of wholesale and retail investment to the total amount invested in the WTC water system.[100] By doing so, the amount of debt service for the water system allocated to retail customers was inflated in FY 2007. For the WTC wastewater system, the record reflects that much of the debt service allocated to the WTC ratepayers was directly related to developer projects unnecessary for the provision of wastewater service to the ratepayers.[101]

For these reasons, the Commission should strike Finding of Fact Nos. 104 and 105.

L. Finding of Fact Nos. 114 and 115.

The ALJ's statements in Finding of Fact Nos. 114 and 115 are not supported by the preponderance of the evidence in the record and are simply incorrect. While LCRA did cash fund projects with impact fees, doing so was illegal, and LCRA artificially and unnecessarily raised the revenue requirement for ratepayers. Moreover, under LCRA Policy 301 and the LCRA bond covenants, LCRA is required to include **ALL** revenue, including impact fee revenue, in calculating whether total revenues meet the debt service coverage.

For the reasons above, the Commission should revise the second sentence of Finding of Fact No. 114 as follows: "In doing so, LCRA unreasonably increased the revenue requirement

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[99] Tr. at 1232:15-16.

[100] Tr. at 1409:2-5.

[101] WTC Exhibit 1, at 91:9-13; District Exhibit DGR-25.

and the associated rates for the WTC systems by not paying debt with impact fees, as required under Chapter 395 of the Texas Local Government Code."

For the reasons above, the Commission should also revise Finding of Fact No. 115 as follows: "Impact fees should be used in the calculation of debt service coverage expense."

M. Finding of Fact No. 120.

Finding of Fact No. 120 is not supported by the preponderance of the evidence in the record. The ALJ states incorrectly that LCRA has no other way to fund all of non-utility activities other than including a charge for these non-utility activities within the WTC water and wastewater rates. This statement is simply incorrect. LCRA can charge user fees and other charges directly to the users of the park operation, the natural resource centers, the environmental laboratory services, and the other non-utility activities. LCRA is not required to subsidize these activities on the backs of the WTC ratepayers. With tight budget, LCRA should ensure that individual programs such as these non-utility activities either pay their own way or are eliminated completely.

For this reason, the Commission should strike Finding of Fact No. 120.

N. Finding of Fact No. 126.

Finding of Fact No. 126 is not supported by the preponderance of the evidence in the record. Even the LCRA witnesses testified that LCRA lowered the revenue requirement via an excess capacity reduction because LCRA constructed excess capacity not necessary or useful to the existing ratepayers. The evidence in the record shows that the excess capacity in infrastructure was for the benefit of future customers, not existing customers.[102] It is patently

[102] *Id.* p. 28:25-26.

unreasonable for current WTC customers to pay for infrastructure not necessary to provide service.

LCRA should be required to include an excess capacity revenue contribution, as LCRA has admitted that it overbuilt the systems.[103] Furthermore, LCRA should include an excess capacity revenue contribution for wastewater, since it has overbuilt that system as well.

For the reasons above, the Commission should strike Finding of Fact No. 126.

O. Finding of Fact No. 127 through 132

Finding of Fact Nos. 127 through 132 are not supported by the preponderance of the evidence in the record nor the law. The ALJ found that it was impossible to determine a revenue requirement or just and reasonable rates from the evidence in the record,[104] because the LCRA failed to meet its burden of proof. LCRA failed to provide sufficient evidence of its cost of providing utility service to support its rate increase. Commission precedent requires that the Commission reinstate the rates as the rates existed prior to the August 2007 increase, consistent with the Commission's recent *North San Saba* and *Double Diamond Utilities* decisions. The ALJ's request that the Appellants conjure up a new revenue requirement and a rate design in the absence of acceptable rates proposed by LCRA is simply an improper shift of the burden of proof to the other parties.[105]

For the reasons above, the Commission should strike Finding of Fact Nos. 127 through 132.

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[103] LCRA Exhibit SK-28.

[104] PFD at 67.

[105] *Id.*

IV.
ALTERNATIVE RATE CALCULATION

On page 67 of his PFD, the ALJ states that he is unable to determine a revenue requirement or the just and reasonable rates, including rates based upon his proposed adjustments to the LCRA revenue requirement. As a matter of law, the fact that the ALJ is unable to determine a revenue requirement or just and reasonable rates from the evidence in the record should preclude any further discussion of a rate increase for LCRA. LCRA has clearly failed to meet its burden of proof that the rates are both just and reasonable, as required under Section 13.043 of the Texas Water Code. The Commission should simply reinstate the rates as the rates existed prior to the increase, as it did recently in the *North San Saba* and *Double Diamond Utilities* cases.

To bridge this gap, the ALJ instead asks the parties to conjure up a revenue requirement and a rate design based on the ALJ's recommended revisions to the WTC revenue requirements for each of the systems. Specifically, the ALJ further asks the parties to "set out the dollar relationship between [his] recommendations, the rates before August 22, 2007, and the interim rates currently in effect."[106] His "recommendations" are those adjustments made throughout the PFD for items like the disallowance of some Rimrock Consulting charges, creation of a restricted capital improvement fund, etc. As set forth in more detail below, in many instances the ALJ's recommendations are inappropriate.

A. ALJ's Recommended Adjustments to FY 2007 O&M Expenses

The ALJ recommended adjustments to the FY 2007 actual expenses, including direct charges and indirect/shared costs. For expenses included in the various cost pools, the ALJ

[106] PFD at 67.

directed that all costs allocated based upon volume should be re-allocated based on direct labor charges.[107] Further, the ALJ directed the removal of the following specific cost categories before calculating the WTC FY 2007 water and wastewater cost of services:

ALJ's Finding of Fact No. 91 – Disallowance of Certain O&M Expenses:

Rate and Financial Analysis – Salaries and Benefits
Rate and Financial Analysis – Other Expenses
Legal Services – Salaries
Legal Services – Other Expenses
Damages from O&M Expenses
Employee Service Awards and Deferred Compensation
Equipment and Software
First Night Austin/Texas Parks & Wildlife Department
Practicing Perfection
Real Estate Acquisition
Strategic Planning Salaries
Strategic Planning Other Expenses
Executive oversight – Other Interest
Miscellaneous
Develop the Water/Wastewater B – Other Interest
Legislative Advocacy

ALJ's Finding of Fact No. 93 – Exclusion of Outside Services for Rate Analysis:

Outside Services – Rimrock Consulting.

ALJ's Finding of Fact No. 94 – Inclusion of Raw Water Use Fee in Water Revenue Requirement:

Raw Water Use Fee - $525,092.08 as shown in General Ledger.

ALJ's Finding of Fact No. 95 –Exclusion of Raw Water Use Fee and Reservation Fees in WTC Wastewater Revenue Requirement:

Raw Water Use Fee - $45,485.63.
Water Reservation Fee - $4,472.35.

The ALJ presumes that the costs included in the FY 2007 General Ledger from the various cost pools were just and reasonable, despite the fact, as discussed above, that LCRA failed to

[107] *Id.* at 31.

introduce any evidence that the costs included in the FY 2007 General Ledger were just and reasonable for the provision of water and wastewater utility service to the WTC ratepayers.

B. Adjusted Total FY 2007 O&M Expenses

Based upon the ALJ's adjustments, the FY 2007 operating and maintenance expenses that were just and reasonable for the WTC water system total $3,229,400, which is a reduction of $2,671,917.[108] For the WTC wastewater system, the ALJ's just and reasonable operating and maintenance expenses for FY 2007 were $612,247, which is a reduction of $435,213 from the expenses allocated by LCRA.[109]

C. Adjusted Debt Service Coverage

When an adjustment is made to the operating and maintenance expenses, as set forth by the ALJ in his Findings and as presented above, a corresponding adjustment must be made to the debt service coverage calculation, because debt service coverage is dependent upon the amount for operating and maintenance expenses. If an adjustment is made to the total of the operating and maintenance expenses, then a corresponding adjustment must be made to the debt service coverage calculation. Additional money for debt service coverage must be added to the total revenue requirement ***ONLY IF*** the debt service coverage calculation results in a ratio less than 1.25. The LCRA coverage requirements specify that net revenues, after meeting operating and maintenance expenses, must be sufficient to exceed the annual debt-service payments by the stated percentage of 25 percent. Coverage requirements are a test of the adequacy of the water

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[108] *See* **Attachment A**, Table One.

[109] *Id.*

and wastewater utility's revenues and do not represent a specific cash requirement or funding obligation.

According to LCRA Policy 301, debt service coverage is a ratio calculated by taking the fiscal year's ending total revenues and subtracting the operating and maintenance expenses and then dividing by the fiscal year's actual debt service. According to LCRA, the total FY 2007 water revenue was $8,414,847.[110] By subtracting the ALJ's total operating and maintenance expense of $3,229,400, and dividing the resulting $5,185,447 by the debt service of $4,549,074, a ratio of 1.14 is achieved. To ensure that the debt service coverage meets the 1.25 ratio, the FY 2007 revenue requirement must include an additional $500,896[111] in revenue. LCRA has already included an additional $298,333 in revenue for use toward its Community Development Fund, so the amount of additional revenue necessary to ensure a 1.25 ratio of debt service coverage is $202,563.[112]

For wastewater, the calculation is similar. According to LCRA, the total FY 2007 wastewater revenue was $2,203,000.[113] By subtracting the ALJ's total operating and maintenance expense of $612,247, and dividing the resulting $1,590,753 by the debt service of $1,857,034 results in a ratio of 0.86. As the calculated ratio is less than 1, the debt service

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[110] LCRA Exhibit SK-4.

[111] [($4,549,074 * 1.25) - $5,185,447] = $500,896.

[112] [$500,896-$298,333] = $202,563.

[113] WTC Exhibit No. 48 (LCRA Exhibit SK-4 include an amount of $1,781,351 for FY 2007 Wastewater Revenue, but does not include all non-rate revenue, as does WTC Exhibit No. 48).

coverage is calculated simply by multiplying the debt service of $1,857,034 by 25 percent, so the amount of additional revenue necessary to ensure 1.25 debt service coverage is $464,259.[114]

D. Adjusted Revenue Requirement

In response to the ALJ Finding of Facts presented above, the ALJ's adjustments to the revenue requirement are as follows:

FY 2007 Water Adjustments	- $3,813,971
FY 2007 Wastewater Adjustments	- $ 493,376[115]

The adjustment values do not coincide with either Ms. Heddin's testimony or the ALJ's numbers shown in the PFD, as both made mathematical errors in their total numbers and failed to include charges within the categories that the ALJ deleted from the total revenue requirement.

Applying these adjustments to expenses shown in the FY 2007 General Ledgers, the ALJ's revenue requirements for FY 2007 are as follows:

ALJ's FY 2007 Water Revenue Requirement	$8,214,391
ALJ's FY 2007 Wastewater Revenue Requirement	$3,007,168

The ALJ's adjusted revenue requirement for water in FY 2007 is less than the total revenue collected; therefore, the just and reasonable rates for WTC water are less than the rates that existed prior to the LCRA rate increase.[116] For wastewater in FY 2007, the revenue must rise 36.52% to make up a shortfall of $804,618.

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[114] 1,857,034 * 1.25] = $464,259.

[115] *See* **Attachment A**, Table One and Two.

[116] *See* **Attachment A**, Table Three.

E. Rates Based On ALJ's Adjustments to the FY 2007 General Ledger

As shown on Exhibit SK-7, Mr. Kellicker indicates that LCRA received a total of $8,414,847 in revenues in FY 2007 based upon the rates that existed prior to the LCRA rate increase, which indicates a surplus in revenue for water in FY 2007 of $162,828.

The LCRA wastewater revenue from the rates in effect prior to August 22, 2007, was $2,203,000, which is not sufficient to cover the ALJ's Adjusted FY 2007 Wastewater Revenue Requirement of $3,007,168. The FY 2007 rates result in a deficit of $804,618, which is a deficit of 36.52%. Applying an "across the board" 36.52% increase to the prior wastewater rates, the Adjusted Wastewater Rates for Residential Customers would be $29.35 per month minimum bill plus a gallonage charge of $4.91 per 1,000 gallons of water billed as compared to the interim rates of $40 per month base rate plus a gallonage charge of $4.75 per 1,000 gallons. However, the resulting wastewater rate is still less than the interim rates in place today.[117]

Based on the ALJ's adjustments to the revenue requirement, the just and reasonable water rates based on the FY 2007 General Ledger data are less than the rates as the rate existed prior to August 22, 2007. For the wastewater system, the rates are less than the interim rates, but more than the rates that existed prior to the August 22, 2007 increase.

[117] *See* **Attachment A**, Table Four.

V.
CONCLUSION

For the foregoing reasons, and those urged in their Closing Argument and Reply to Closing Arguments, the Districts request that the Commission overturn the water and wastewater rates adopted by the LCRA on August 22, 2007 on the basis of the administrative record currently in place and reinstate the rates as the rate existed prior to August 22, 2007. Alternatively, the Districts request that the Commission adjust the rates as shown above in its Alternative Rate Calculations and order a refund to the WTC ratepayers accordingly.

Respectfully submitted,

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ATTORNEYS FOR WEST TRAVIS COUNTYMUD NOS. 3 and 5

CERTIFICATE OF SERVICE

This is to certify that the undersigned sent a true and correct copy of the foregoing Districts' Exceptions to the Proposal for Decision in accordance with the applicable agency rules, as noted below, on this 28th day of February 2011 to the following parties:

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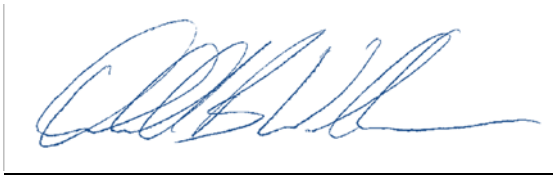

Randall B. Wilburn

ATTACHMENT “A”

TABLE ONE

LCRA WEST TRAVIS COUNTY WATER AND WASTEWATER FY 2007 ADJUSTMENTS AS PER ALJ PFD and DRAFT ORDER

A	B	C	D	E	F	G	H	K
ITEM NO.	O&M EXPENSES	WATER			WASTEWATER			**COMMENTS**
		LCRA FY2007	ADJUSTMENTS AS PER FINDING OF FACTS	**ADJUSTED FY2007 EXPENDITURES PER FINDING OF FACTS**	LCRA FY2007	ADJUSTMENTS AS PER FINDING OF FACTS	**ADJUSTED FY2007 EXPENDITURES PER FINDING OF FACTS**	
1	Subtotal - Direct O&M	$1,954,429	$467,970	**$2,422,399**	$609,681	-$145,374	**$464,307**	Column C and F From SK-4: Column E and Column H From Table Twc
2	Subtotal - Shared and Indirect O&M	$3,946,888	-$3,139,887	**$807,001**	$437,779	-$289,839	**$147,940**	Column C and F From SK-4: Column E and Column H From Table Twc
3	TOTAL O&M EXPENSE	$5,901,317	-$2,671,917	**$3,229,400**	$1,047,460	-$435,213	**$612,247**	
4	Debt Service	$4,549,074	$0	**$4,549,074**	$1,857,034	$0	**$1,857,034**	From SK-4
5	Operations Reserve	$179,997	-$179,997	**$0**	$47,340	-$47,340	**$0**	
6	Times Coverage	$1,137,269	-$934,706	**$202,563**	$464,259	$0	**$464,259**	
7	Community Development	$298,333	-$64,979	**$233,354**	$84,901	-$10,823	**$74,078**	3.0% Times Sum of Item Nos. 3 and 4
8	TOTAL EXPENSE	$12,065,990	-$3,851,599	**$8,214,391**	$3,500,994	-$493,376	**$3,007,618**	
9	LESS TOTAL REVENUES FROM SALES	-$8,414,847	$0	**-$8,414,847**	-$2,203,000	$0	**-$2,203,000**	
10	ADDITIONAL REVENUE REQUIREMENT (Negative Number is Surplus Revenue)	$3,651,143	-$3,851,599	**-$200,456**	$1,297,994	-$493,376	**$804,618**	

ATTACHMENT "A"

TABLE TWO
WEST TRAVIS COUNTY WATER SYSTEM
LCRA WATER AND WASTEWATER FY2007 OPERATION AND MAINTENANCE REQUIREMENT ADJUSTMENTS AS PER ALJ'S PFD AND DRAFT ORDER

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
ITEM NO.	**DESCRIPTION**	**WTC WATER - DIRECT**	**WTC WW - DIRECT**	**WTC OPERATING CENTER**	**WTC REGION**	**WTC RETAIL**	**WWUS**	**NEW BUSINESS DEVELOPMENT**	**WATER SERVICES BUSINESS UNIT**	**CORPORATE SERVICES BUSINESS UNIT RESIDUAL ALLOCATED TO CORPORATE COSTS (PER JS-9)**	**CORPORATE SERVICES BUSINESS UNIT RESIDUAL ALLOCATED TO CORPORATE CIP CREDIT (PER 2007 Ledger)**	**CORPORATE SERVICES BUSINESS UNIT RESIDUAL ALLOCATED TO CORPORATE COSTS (PER JS-9)**	**CORPORATE SERVICES BUSINESS UNIT RESIDUAL ALLOCATED TO CORPORATE CIP CREDIT (PER 2007 Ledger)**	**TOTAL INDIRECT**	**TOTAL O&M**
1	**TOTAL FY2007 COST PER GENERAL LEDGER**	$1,954,429.00	$609,681.00	$242,588.00	$171,910.00	$873,537.00	$3,468,143.00	$390,363.00	$5,408,124.00	$33,336,941.00	-$1,028,933.00	$33,336,941.00	-$77,577.86		
2															
3	**ALJ PROPOSED REDUCTIONS**														
4	Rate and Financial Analysis Salaries and Benefits	$19,726.00	$5,416.04		$2,402.67			$2,136.24	$142,685.19						
5	Rate and Financial Analysis - Other Expenditures	$18,536.00			$27.90				$385.00						
6	Legal Services - Salaries								$15,294.00						
7	Legal Services - Other Expenses						$7,986.70	$5,690.94	$14,415.00						
8	Damages From O&M Injuries						$51,957.68		$10,867.00						
9	Employee Service Awards and Deferred Compensation					$3,032.18	$130,920.52		$148,486.00						
10	Equipment and Software					$115,841.28	$17,366.04		$65,748.00						
11	First Night Austin/Texas Parks & Wildlife Department								$22,500.00						
12	Practicing Perfection						$34,550.00								
13	Real Estate Acquisition	$2,400.00	$90,000.00				$253.80								
14	Strategic Planning - Salaries								$559,936.90						
15	Strategic Planning - Other Expenses								$12,071.22						
16	Executive Oversight - Other Interest								$10,896.22						
17	Miscellaneous					$18,388.88	$22,865.45								
18	Develop the Water/Wastewater B - Other Interest	$16,460.00													
19	Raw Water Charges		$45,485.63												
20	Water Charge - Reservation Fee		$4,472.35												
21															
22	**ALJ PROPOSED ADDITIONAL CHARGE**														
23	Raw Water Use Fee	-$525,092.08													
24															
25	SUBTOTAL ADJUSTMENTS	-$467,970.08	$145,374.02	$0.00	$2,430.57	$137,262.34	$265,900.19	$7,827.18	$1,003,284.53	$0.00	$0.00	$0.00	$0.00		
26	ADJUSTED TOTAL COSTS	$2,422,399.08	$464,306.98	$242,588.00	$169,479.43	$736,274.66	$3,202,242.81	$382,535.82	$4,404,839.47	$33,336,941.00	-$1,028,933.00	$33,336,941.00	-$77,577.86		
27															
28	ALLOCATION FACTOR TO ALLOCATE TO WSBU	n/a	n/a	n/a	n/a	n/a	n/a	n/a	100%	13%	n/a	13%			
29	ALLOCATION TO WSBU	n/a	n/a	n/a	n/a	n/a	n/a	n/a	$4,404,839.47	$4,333,802.33	n/a	$4,333,802.33			
30															
31	ALLOCATION FACTOR TO ALLOCATE TO WWUS	n/a	n/a	n/a	n/a	n/a	100%	n/a	33%	14%	n/a	14%			
32	ALLOCATION TO WWUS	n/a	n/a	n/a	n/a	n/a	$3,202,242.81	n/a	$1,453,597.03	$606,732.33	n/a	$606,732.33			
33															
34	ALLOCATION FACTOR TO ALLOCATE WTC REGION	n/a	n/a	100%	100%	n/a	n/a	68%	n/a	n/a					
35	ALLOCATION TO WTC REGION	n/a	n/a	$242,588.00	$169,479.43			$260,124.36	n/a	n/a					
36															
37	PERCENTAGE ALLOCATED TO WTC WATER	100%	0%	66%	66%	39%	21%	66%	21%	21%	100%	0%	0%		
38	ALLOCATION TO WTC WATER	$2,422,399.08	$0.00	$160,108.08	$111,856.42	$287,147.12	$672,470.99	$171,682.08	$305,255.38	$127,413.79	-$1,028,933.00	$0.00	$0.00	$807,000.85	**$3,229,399.93**
39															
40	PERCENTAGE ALLOCATED TO WTC WASTEWATER	0	100%	19.90%	19.90%	13.47%	6.22%	19.90%	6.22%	0.00%	0.00%	6.22%	100%		
41	ALLOCATION TO WTC WASTEWATER	$0.00	$464,306.98	$31,861.51	$22,259.43	$38,678.72	$41,827.70	$34,164.73	$18,986.88	$0.00	$0.00	$37,738.75	-$77,577.86	$147,939.86	**$612,246.84**

ATTACHMENT "A"

TABLE THREE
LCRA WATER RATES

A	B	C	D
DESCRIPTION	**RATES PRIOR TO AUGUST 22, 2007**	**INTERIM RATES OCTOBER 1, 2008**	**ALJ'S RATES**
RESIDENTIAL CUSTOMERS - BEE CAVE DISTRICT			
Minimum Bill - 5/8" Meter	$27.50	$31.65	$26.84
Gallonage Charge			
0 - 1,000 gals	$0.00	$3.80	$0.00
1,001-10,000 gals	$2.80	$3.80	$2.73
10,001 - 20,000 gals	$3.50	$5.00	$3.42
20,001 - 25,000 gals	$3.50	$6.00	$3.42
25,001 - 50,000 gals	$5.75	$8.10	$5.61
50,001 gals and above	$6.50	$10.20	$6.35
NONRESIDENTIAL CUSTOMERS - BEE CAVE DISTRICT			
Minimum Bill - 5/8" Meter	$27.50	$31.65	$26.84
Gallonage Charge			
0 - 1,000 gals	$0.00	$3.80	$0.00
1,001-10,000 gals	$2.80	$3.80	$2.73
10,001 - 20,000 gals	$3.50	$5.00	$3.42
20,001 - 25,000 gals	$3.50	$6.00	$3.42
25,001 - 50,000 gals	$5.75	$8.10	$5.61
50,001 gals and above	$6.50	$10.20	$6.35
IRRIGATION CUSTOMERS - BEE CAVE DISTRICT			
Minimum Bill - 5/8" Meter	$27.50	$31.65	$26.84
Gallonage Charge			
0 - 1,000 gals	$0.00	$3.80	$0.00
1,001-10,000 gals	$2.80	$3.80	$2.73
10,001 - 20,000 gals	$3.50	$5.00	$3.42
20,001 - 25,000 gals	$3.50	$6.00	$3.42
25,001 - 50,000 gals	$5.75	$8.10	$5.61
50,001 gals and above	$6.50	$10.20	$6.35

ATTACHMENT "A"

TABLE FOUR
LCRA WASTEWATER RATES

A	B	C	D
DESCRIPTION	**RATES PRIOR TO AUGUST 22, 2007**	**INTERIM RATES OCTOBER 1, 2008**	**ALJ'S RATES**
RESIDENTIAL CUSTOMERS			
Minimum Bill	$21.50	$40.00	$29.35
Gallonage Charge	$3.60	$4.75	4.91
NONRESIDENTIAL CUSTOMERS			
Minimum Bill	$36.00	$65.00	49.15
Gallonage Charge	$5.75	$6.25	7.85
MUTI-UNIT/MULTIPLE USE CUSTOMERS			
Minimum Bill	$36.00	$60.00	49.15
Gallonage Charge	$5.75	$6.25	7.85

ATTACHMENT "A"