

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER
REGARDING THE APPEAL OF THE RETAIL WATER AND WASTEWATER RATES
OF THE LOWER COLORADO RIVER AUTHORITY
SOAH DOCKET NO. 582-08-2863
TCEQ DOCKET NO. 2008-0093-UCR**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the appeals of the retail water and wastewater rates set by the Lower Colorado River Authority for its West Travis County Regional Water and Wastewater Systems. A Proposal for Decision (PFD) was presented by Henry D. Card, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

Description of LCRA and Appellants

1. The Lower Colorado River Authority (LCRA) is a political subdivision of the State of Texas, created and functioning as a non-profit conservation and reclamation district under Article XVI, Section 59 of the Texas Constitution.
2. LCRA provides energy, water and wastewater, and community services.

3. LCRA is organized into five business units: (1) Wholesale Power Services; (2) Transmission Electric Services; (3) Water Services; (4) Community Services; and (5) Corporate Services.
4. The Water Services Business Unit (WSBU) operates the Highland Lakes dams and hydroelectric generating facilities; provides water and wastewater utility services; and manages surface water resources.
5. WSBU itself is divided into four operating units: (1) Water and Wastewater Utility Services (WWUS); (2) Raw Water; (3) Hydroelectric; and (4) Irrigation.
6. WWUS operates LCRA's water and wastewater systems. In 2007, LCRA owned and/or operated 40 water and wastewater systems that provided service across mostly rural and suburban Central and South Central Texas, serving a population of over 250,000 in 13 counties.
7. WWUS, in turn, is divided into four geographic regions: (1) the Williamson County Region; (2) the Southwest Region; (3) the Hill Country Region; and (4) the West Travis County Region.
8. WWUS accounts for approximately 1.5 percent of LCRA's total revenues.
9. LCRA first entered the retail water and wastewater business in the 1990s.
10. LCRA's utility systems fall into a few descriptive categories. The first category is small systems, commonly serving fewer than several hundred connections. Those systems often were constructed by developers and either turned over to the residents or to small entities that did not have the means to make needed capital improvements. The second category is systems where LCRA got involved to address regulatory, environmental, or public health concerns. A third category is systems built to serve LCRA facilities. The

fourth category is regional systems designed to provide efficient services to meet needs in growing areas that cross jurisdictional boundaries. The West Travis County (WTC) systems, which are the subject of this case, fall into the last category.

11. The WTC Region consists of two potable water systems (the WTC Regional Water System and the Glenlake Water System), one wastewater treatment and collection system (the WTC Regional Wastewater System), two wastewater collection systems (West Lake Hills Wastewater System and Rollingwood Wastewater System), and a raw water intake and pumping system (Lakeway Regional Raw Water System). LCRA acquired the WTC Regional Water System in 1994 and the WTC Regional Wastewater System in 2000.
12. The WTC Regional Water System served approximately 4200 retail water meters and seven wholesale meters connections at the end of Fiscal Year (FY) 2007.
13. Demand is better measured by Living Unit Equivalents (LUEs) than by connections, because of variability in meter sizes and demand. By that measure, the WTC Regional 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. It served several areas and subdivisions, including the City of Bee Cave (Bee Cave) and the Lake Pointe subdivision.
14. At the end of FY 2007, the WTC Regional Wastewater System served approximately 1,700 total LUEs. It served the Lake Pointe Subdivision, the Falconhead and Spanish Oaks Subdivisions, and commercial development in Bee Cave and its ETJ along FM 2244, RM 620, and State Highway 71.
15. Bee Cave is a small, but rapidly growing city in Travis County, west of Austin.

16. West Travis County Municipal Utility District Nos. 3 and 5 (the Districts) are municipal utility districts that provide service in the Lake Pointe subdivision, near Bee Cave.
17. The area served by the WTC Systems is hilly, rugged, and remote from reliable water supplies. It is also environmentally sensitive.
18. Many of the WTC Regional Water System's customers in the Bee Cave area use high volumes of water, particularly in the summer months. The average summer water use in that area is 25,000 gallons per month.
19. LCRA allocates much of its shared and indirect operating costs among its regions and systems according to the volume of water use.
20. The Hill Country Region contains 17 water non-contiguous rural water systems, two wastewater systems, and one biosolids composting facility in five counties to the west of Austin.
21. Although the number of water customers for WTC Water was approximately the same as for the Hill Country Region in August of 2007 (4,176 for WTC Water and 4076 for the Hill Country Region), the volumes of water used were considerably different: 2,120,325,300 gallons for WTC Water and 359,949,593 gallons for the Hill Country Region.

Notice and Procedural History

22. The LCRA Board of Directors adopted new rates for the WTC Regional Systems on August 22, 2007.
23. On November 30, 2007, the Commission received petitions of appeal from Bee Cave and the Districts of the rate increase for the WTC Regional Water System and from the Districts for the WTC Regional Wastewater System.

24. Although the matter was first referred to SOAH in January of 2008, the administrative record was not transferred until May 16, 2008, and the affidavit of public notice filed August 4, 2008.
25. The preliminary hearing was held August 19, 2008. At the preliminary hearing, jurisdiction was established and the following parties were designated: LCRA, Bee Cave, the Districts, the Office of Public Interest Counsel (OPIC), and the Commission's Executive Director. No discovery or hearing schedule was set, to allow the parties the opportunity for further discussions.
26. Discussions continued into February of 2009, when LCRA informed the ALJ that the parties had reached what LCRA described as a temporary procedural impasse. One of the issues about which the parties could not agree was whether LCRA or the Appellants had the burden of proof in the proceeding.
27. On August 20, 2009, the Commission issued its Interim Order answering certified questions sent to it by SOAH and determining that LCRA had the burden of proof.
28. After the Commission's Interim Order, the ALJ granted Bee Cave's motions to end the abatement of the proceedings and to set interim rates at the level of LCRA's second-step increase.
29. The hearing on the merits was convened August 23, 2010, and adjourned September 8, 2010, after eleven days of hearing. The rate-case-expense phase was convened November 9, 2010, and adjourned November 10, 2010. The parties filed their initial written closing arguments on October 29, 2010. They filed their written replies, which also addressed the rate-case-expense issues, on December 10, 2010. The record closed

on December 13, 2010, with the filing of the Executive Director's supplement to his reply.

Description of the Rate Increases

30. The Board set the rates for the WTC systems based on LCRA's budget projections for FY 2010, to increase in three steps, effective October 1, 2007, 2008, and 2009.
31. LCRA's cost-of-service study anticipated that a substantial portion of the increased revenues would be achieved through increased connections. Nevertheless, the rate increases are substantial.
32. The adopted water rates increased both the base charges and the volume charge, which itself increases with higher consumption levels.
33. The median residential water usage in the WTC system at the time of the rate increase was just below 10,000 gallons per month. For a residential customer using 10,000 gallons in the Bee Cave District, the final rate would result in a monthly bill of \$82.65, which is an increase of \$29.95 per month over the bill before the rate increases.
34. The adopted rates would also increase both the monthly base charge and the volume charge for wastewater customers. For a residential customer with a winter average of 10,000 gallons, the final rate would result in a monthly bill of \$109.50, which is an increase of \$52.00 per month over the bill before the rate increases.
35. LCRA hired Rimrock Consulting to perform a cost-of-service study for the WTC Regional Systems.
36. Although it included some historical information for reference, the Rimrock cost-of-service study was designed only to allocate the revenue requirements. Those revenue requirements themselves, and the underlying information for FY 2007-2010, were

supplied by LCRA based on its budgets for those fiscal years as of the time of the study. Those budgets had their foundation in the FY 2007 business planning process.

37. LCRA set its revenue requirement on the FY 2010 budget projections.
38. LCRA's Staff originally intended to present the rate changes to the Board in September of 2006 as a two-step increase. That plan was postponed to allow an audit of the Water Wastewater Operating unit and its financial option by the Barrington-Wesley Group (BWG) and to seek input from customers.
39. The three-step increase adopted on August 22, 2007, set rate increases to occur on October 1, 2007, October 1, 2008, and October 1, 2009.
40. The first two steps of the rate increase did not correspond to the calculated revenue requirements for FY 2008 and 2009.

LCRA's Use of FY 2010 Budget for Ratesetting

41. Each year LCRA adopts a five-year budget for planning purposes, with spending authorized only for the first year.
42. The budget is usually not revised during the year, but is revisited and revised the subsequent year.
43. Not all of the elements of the FY 2010 budget shown in the cost-of-service study were thoroughly or comprehensively determined—for example, allocated expenses were merely increased three percent per year to account for anticipated inflation.
44. Even the most thorough and comprehensive analysis cannot necessarily see years into the future.

45. The FY 2010 budget data was not a reliable forecast of the WTC Systems' anticipated expenses for setting rates in 2007; therefore, the use of that data was not just and reasonable.

The actual FY 2007 data, if just and reasonable for ratesetting, 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.

Basis for Calculating Revenue Requirement

46. The LCRA Board approved the FY 2008 budget before August 22, 2007.
47. The cost-of-service study was finished in September 2006 and used actual data approximately through April or May of 2006.
48. The cost-of-service study's figures for FY 2008 were not actual FY 2008 budget figures, but were projections themselves based on data that were more than a year old at the time the rates were set.
49. It would have been reasonable for LCRA to have used its actual FY 2008 budget, set in the summer of 2007, to set rates in August of 2007.
50. The projected FY 2008 budget in the cost-of-service study, based on data more than a year old, was not a reliable forecast of the WTC systems' anticipated expenses for setting rates in 2007; therefore, the use of that data would not be just and reasonable.
51. In the absence of a reliable budget adopted close in time to the actual rate increase, LCRA's actual FY 2007 data should be the starting point for ratesetting in this case.
52. The actual FY 2007 figures were available at the time the Board set the rates that are at issue in this case.

O&M Expenses

Use of Volume As Allocator

53. All work performed by LCRA, including work that benefits the WTC Regional Systems, is recorded on LCRA's books and records via work order entries. That procedure applies to all direct and shared/indirect costs.
54. When a work order is set up, a combination of components from LCRA's chart of accounts is assigned to that work order. That combination directs the transaction to a specific business unit or units and cost center(s).
55. Direct and indirect operating and support costs that are attributed to the WTC Regional Systems may originate in any business unit in LCRA, depending on the services provided and received. Operating costs originate primarily in the WSBU and may include costs from other operating units within the WSBU, such as the WWUS. Support costs and shared/indirect costs originate in the WSBU and the CSBU.
56. Four general cost pools contain costs that ultimately are allocated to the WTC Regional Systems and other systems. Those cost pools are:
 1. Corporate Services level expenses (CSBU);
 2. Water Services Business Unit (WSBU) expenses, which represent
 - (a) WSBU Internal Overhead expenses and
 - (b) New Business Development expenses;
 3. WWUS expenses, which represent
 - (a) WWU Common Expenses and
 - (b) Retail Customer Services expenses; and
 4. West Travis County Region (WTCR) level expenses, which represent

- (a) Region general expenses and
- (b) Operating Center expenses.

- 57. The CSBU costs are assigned to the other business units by direct charging or, when that is not deemed feasible, through allocation. Those CSBU residual expenses are allocated to those units through various means, such as head count (human resources) or operating revenues (overall governance costs, such as the General Manager and the Board). The amount allocated to WWUS is first allocated to systems where there is no volume based on the percentage of direct labor of the system. The remainder is allocated to the volume-drive systems based on their relative volumes.
- 58. WSBU Internal Overhead costs are allocated to the four operating systems (of which WWUS is one) based on relative labor hours. As with the corporate residual costs, the WWUS share is first allocated to systems where there is no volume based on the percentage of direct labor of the system. The remainder is allocated to the volume-driven systems based on their relative volumes.
- 59. WSBU New Business Development expenses are allocated between the Raw Water Operating Unit and WWUS based on their pro-rata share of direct charges from the New Business Development group. WWUS' share is allocated between the four regions based on relative number of households, then within the WTC Region based on volume.
- 60. WWUS Common expenses also are first allocated to systems where there is no volume based on the percentage of direct labor of the system. The remainder is allocated to the volume-driven systems based on their relative volumes.
- 61. WWUS Customer Service expenses are allocated to the various systems based on the relative number of retail customers.

62. WTC Region Operating Center expenses are allocated based on direct labor charges of operations staff.
63. WTC Region general expenses are allocated to systems based on the relative volume.
64. LCRA's use of relative volume as the primary allocator for shared and indirect costs began in FY 2006.
65. Before FY 2006, costs were allocated based on a spreadsheet model. The allocation approach was not consistent throughout LCRA; LCRA determined it needed a consistent approach. After considering other approaches, LCRA determined volume, which was common throughout the systems, was the best method for allocating shared and indirect costs that could not be directly assigned.
66. The results of using volume as an allocator were significant. In FY 2004, the WTC Water system had \$1,862,356 in allocated shared and indirect O&M costs. In FY 2005, it had \$4,164,403 in allocated shared and indirect O&M costs. Although overall costs increased somewhat, much of the shared and indirect O&M increase was due to the revised allocation formula.
67. The WTC Systems are in growing areas, while many of the Hill Country Region systems are smaller systems with fewer financial means and with potential regulatory, environmental and public health issues.
68. Under LCRA's procedures for allocating shared and indirect costs, which rely extensively on relative volumes, considerably more costs were allocated to the WTC Region than to the Hill Country Region.
69. In the Hill Country cost-of-service study, upon which rates were also set on August 22, 2007, the Hill Country Region's allocated shared and indirect O&M costs for FY 2007

were \$66,000. In contrast, the WTC Region cost-of-service study set its allocated shared and indirect costs for FY 2007 at \$3,575,024.

70. Although treated water is the end product of the individual systems, the record contains no credible evidence that the costs that are allocated by LCRA vary in accordance with the volume of water.
71. Although Mr. Kellicker stated that various other allocators were considered and found inadequate, LCRA did not produce any study or written document to that effect.
72. The use of volumes as an allocator appears to have been primarily, if not entirely, an accounting determination rather than an engineering or operations one.
73. Several types of costs were included in the cost pools but would not necessarily increase according to volume, such as operations personnel, maintenance, telecommunications, security, safety and environmental activities, and technology services.
74. LCRA failed to prove the reasonableness of its use of relative volumes to allocate shared and indirect costs.
75. Direct labor more closely approximates cost causation and should be used instead as a cost allocator for ratesetting in lieu of relative volumes, for both WTC Water and WTC Wastewater.

Specific O&M Expenses

76. Although LCRA based its rate increase on its FY 2010 budget forecast, it presented data for FY 2007, both in support of those budget projections and in anticipation of the other parties' opposition to its approach.
77. Leave benefits are not separately loaded into the accounting system as an adder during the annual business planning process. The planning assumption is that each budgeted

position is expected to be paid for at least 2,080 hour each year. By using 2,080, LCRA included the total cost of leave in developing its budget.

78. The actual base labor paid as compensation for leave does not get charged as labor to the systems; related costs for leave are recorded in benefit accounts.
79. LCRA's benefits accounting was accurate.
80. LCRA's construction and engineering staff provide routine, recurring work at its facilities.
81. Engineering Services budgeted time to the cost pools to support maintenance programs and activities with the region, as well as helping develop the capital plan and consult on operations issues.
82. Construction Services budgeted time to support maintenance programs and activities within the region.
83. Rates and Analysis' activities included business and financial analyses of individual systems, financial monitoring and tracking, and developer reimbursement information.
84. Legal Services reviewed contracts, met with developers, and supported the general needs of the utility, such as drafting or reviewing Board agenda items.
85. The New Business Development cost pool included engineers analyzing possible additions to the system, managers conducting discussions with developers, municipalities, and community leaders regarding system additions, and rates and analysis personnel providing financial analysis of potential additions and acquisitions.
86. Rate Analysis personnel provided ongoing financial support activities, such as developing annual budgets and monitoring monthly financial performance.

87. LCRA has committed to reserve raw water for the utilities despite the lack of a contract with itself. To delete the raw water charges would require raw water customers to subsidize retail customers.
88. The cash-needs approach to ratemaking includes recovery of cash capital outlays.
89. LCRA is not seeking recovery of expenses for damages from operations and employee injuries, employee service awards and deferred compensation, equipment and software, First Night and the Texas Parks and Wildlife Department, “Practicing Perfection,” certain real estate acquisitions, strategic planning salaries and other expenses, executive oversight other interest expense, certain miscellaneous items, “Develop the Water/Wastewater B,” other interest expense, or legislative advocacy expense.
90. With a few exceptions set out in the following Findings, LCRA’s actual FY 2007 direct O&M expenses, along with the underlying cost pool expenses, were just, reasonable, and useful in providing service.
91. The following particular O&M expenses should be deleted before calculating the WTC Water O&M expenses:

| Description | Amount | Exhibit No. |
|----------------------------------|---------------|--------------------|
| Rate and Financial Analysis-- | | |
| Salaries and Benefits | \$114,431 | BC-24 |
| Rate and Financial Analysis-- | | |
| Other Expenses | 18,948 | BC-25 |
| Legal Services—Salaries | 15,294 | BC-51. |
| Legal Services—Other Expenses | 22,276 | BC-26 |
| Damages from O&M Injuries | 62,825 | BC-27 |
| Employee Service Awards and | | |
| Deferred Compensation | 286,623 | BC-28 |
| Equipment and Software | 195,243 | BC-29 |
| First Night Austin/Texas Parks & | | |
| Wildlife Department | 22,500 | BC-30 |

| | | |
|------------------------------------|---------|-------|
| “Practicing Perfection” | 34,550 | BC-31 |
| Real Estate Acquisition | 2,653 | BC-32 |
| Strategic Planning-- | | |
| Salaries | 357,900 | BC-51 |
| Strategic Planning-- | | |
| Other Expenses | 12,702 | BC-33 |
| Executive Oversight—Other Interest | 10,896 | BC-34 |
| Miscellaneous | 40,810 | BC-35 |
| “Develop the Water/Wastewater B”— | | |
| Other Interest | 16,459 | BC-36 |
| Legislative Advocacy | 10,069 | NA |

92. With the exception of legislative advocacy, the excluded expenses are from various cost pools at various levels of the LCRA organization. They should be allocated to (or rather, from) WTC Water in the manner set out in Ms. Heddin’s testimony, without her proposed related adjustments for benefits and FICA.
93. The \$18,536 in outside services for rate analysis paid to Rimrock Consulting is not a normal operating expense and should be excluded from WTC Water’s O&M expenses.
94. The raw water reservation fee should be included in the WTC Water expenses.
95. To the extent those fees exist, the raw water charges or reservation fees for WTC Wastewater should be disallowed as proposed by the Districts.

Debt Service Expense

96. LCRA’s actual expense summary for FY 2007 shows debt service expense of \$4,549,074 for WTC Water and \$1,857,034 for WTC Wastewater
97. Because LCRA does not earn a return on investment and cannot have taxing authority, it has two sources of funds: revenues produced from operations and proceeds from the issuance of debt.

98. LCRA issues debt as an entity, rather than by individual operating units or systems.
99. LCRA system debt is assigned to each business unit and operating unit, including WSBU and ultimately the WTC systems, based on their respective pro rata shares of capital activity that is debt-funded.
100. At the time the system debt is issued, that debt is specifically assigned to the appropriate capital project expenditures being financed.
101. Actual debt service is the sum of all payment schedules for all debt assigned from each revenue bond issue.
102. As of June 30, 2006, the net book value of the WTC Regional Water System was \$74,936,544 and the net book value of the WTC Regional Wastewater system was \$27,492,632. Those figures included completed capital projects and those in the planning and construction phases.
103. LCRA provided adequate documentation to show how the amount of debt-funded capital project spending for WTC Water and WTC Wastewater were determined.
104. The FY 2007 actual debt service of \$4,549,074 for WTC Water was reasonable.
105. The FY 2007 actual debt service of \$1,857,034 for WTC Wastewater was reasonable.

Operations Reserve Expense

106. Under Policy 301, LCRA is to maintain the following target levels of operating reserves:
Six months of average debt service on all outstanding debt and two months of average operation and maintenance expenses.
107. LCRA debt-funds its operating reserves.

- 108. LCRA included some operations reserve expense in its FY 2007 expenses to account for incremental amounts not recovered.
- 109. Because of the decrease in O&M expenses, an additional amount for operations reserve is not required.

Debt Service Coverage Expense

- 110. Under its bond covenants and its Policy 301, LCRA is required as an entity to maintain debt service coverage of 1.25 percent.
- 111. Debt service coverage, if kept within the system, is a legitimate cost of providing service.
- 112. If the WTC systems were exempt from the debt service cost, other LCRA systems or business units would be subsidizing them.
- 113. It is reasonable to require the systems to reach the debt service coverage level of 1.25x.
- 114. LCRA used the FY 2007 impact fee revenues to revenue-fund WTC Water and WTC Wastewater capital projects. In doing so, it reduced potential debt financing of those projects.
- 115. Impact fees should not be used to offset debt service coverage expense.
- 116. LCRA reasonably calculated debt service coverage expense for WTC Water and WTC Wastewater equal to 25 percent of the corresponding debt service expense.
- 117. Debt service coverage actually collected through rates, if any, should be accounted for in a restricted fund to be used for only capital improvements or reduction of debt service within the West Travis County Region, or for contributions to operating reserves as required by the LCRA Board of Directors.

Community Development Expense

118. LCRA Board Policy 301 states that three percent of utility budgeted gross revenues shall be charged for community development activities.
119. For ratemaking purposes, because that would be a circular calculation, the community development amount was estimated as three percent of: total O&M expenses, plus debt service costs, plus operation reserves included in rates, plus times coverage included in the rates, less miscellaneous revenues offsetting rate requirements, less LUE reservation charges offsetting rate requirements.
120. The community development revenue is used to fund community development and other activities which LCRA is authorized to perform, but which otherwise would have no source of funding. Those activities include community and economic development, parks operations, natural resource services, resource planning and development, public safety, environmental laboratory services, and watershed monitoring and maintenance.
121. LCRA is authorized to provide the services and engage in the activities accomplished by the community development revenues.
122. The Community Development expenses are reasonable costs for the LCRA system and should be part of the expenses assessed against the WTC systems.
123. Because the debt service coverage is to be retained within the system as recommended by the Executive Director, the Community Development expense should not be incorporated into the debt service coverage expense as suggested by Bee Cave.

Non-Rate Revenues

124. The LCRA non-rate operating revenues for FY 2007 included: 1) Excess Capacity Reserves; 2) LUE Reservation Charges; 3) Raw Water/Effluent Revenues; and 4) Other /Miscellaneous Revenues, as well as wholesale water revenues. Those revenues are counted as credits and used to offset the revenue requirements.
125. “Excess capacity reserves” do not originate from ratepayers, but are contributed by LCRA to the WTC systems to account for capacity constructed to serve future, rather than current, customers.
126. LCRA should not be required to include an excess capacity revenue contribution in its non-rate revenues.

Rate Design

127. The rate design set out by the Executive Director was reasonable and should be used in establishing the rates in this case.

Refunds/Recovery of Lost Revenues

128. The rates currently in effect are interim rates set at the level of Phase 2 of LCRA’s three-phase increase.
129. If the rates ultimately set are above that level, LCRA should be allowed to recover the lost revenues.
130. If lost revenues are to be recovered, those revenues should be calculated from October 1, 2009 (the date on which the third step would have gone into effect) until the date of the Commission’s Order. A surcharge should then be calculated by taking the amount of the lost revenues for each system (WTC Regional Water and Wastewater) divided by the number of active LUEs at the time of the Commission Order, to be collected over a

period of 24 months, or until the revenue is recovered. The lost revenues should be determined by taking actual billing data for the period beginning October 1, 2009 through the date of Commission Order.

131. Because all WTC Wastewater customers are also customers of WTC Water, only one surcharge would be required.
132. If the rates ultimately adopted are below the current level, refunds should be calculated in the same manner as recommended by LCRA for potential lost revenues, and be accomplished over a 24-month period.

Apportionment of Transcript Costs

133. LCRA should pay the hearing transcript expenses.

Rate Case Expenses

134. LCRA seeks recovery of \$959,490.97 in rate case expenses, which includes attorneys' fees, consultants' fees, transcript costs, and other miscellaneous expenses.
135. The requested expenses were broken into broad categories as follows:

Attorneys Fees

| | |
|--|-------------------|
| Freeman & Corbett LLP (invoices dated 11/9/07-2/2/09) | \$ 14,135.00 |
| McCall, Parkhurst & Horton LLP (invoice dated 8/13/10) | 760.00 |
| Jackson Walker LLP (invoices dated 1/14/10-10/18/10) | <u>764,607.09</u> |
| Subtotal | 779,502.09 |

Consultants

| | |
|---|------------------|
| J. Stowe & Co., Inc. (invoices date 1/19/10-9/10/10) | 97,903.94 |
| Rimrock Consulting co. (invoices dates 11/1/07-9/10/10) | <u>63,025.63</u> |
| Subtotal | 160,929.57 |

Expenses

| | |
|----------------------------------|--------------|
| Kennedy Reporting Services, Inc. | 17,273.85 |
| Texas Depo | 1,767.31 |
| Pro Courier Services | <u>18.15</u> |
| Subtotal | 19,059.31 |

Total

\$959,490.97¹

136. A two-day hearing was held on the rate-case-expense issue on November 9-10, 2010.
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, and because this Order would lead to at least a significant reduction from LCRA's third-phase rates, LCRA should not recover its rate case expenses in this case.

II. CONCLUSIONS OF LAW

1. The Texas Commission on Environmental Quality (the Commission) has jurisdiction over these appeals pursuant to TEX. WATER CODE ANN. § 13.043.
2. The petitions of appeal were filed within the 90-day time limit set by TEX. WATER CODE ANN. § 13.043(c) and 30 TEX. ADMIN. CODE (TAC) § 291.41(c).
3. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. § 2003.047 and TEX. WATER CODE ANN. § 5.311.
4. All required notices of the application and the contested case hearing on it were given as required by law. TEX. WATER CODE ANN. § 13.187; TEX. GOV'T CODE ANN. §§ 2001.051 & 2001.052.
5. A district whose ratepayers have appealed under TEX. WATER CODE ANN. § 13.043(b) must still demonstrate that its rates are just and reasonable.

¹ LCRA Closing Argument on Rate Case Expenses, page 2. Of the \$17,273.85 in Kennedy Reporting expenses, \$13,520.25 was related to transcript costs for the evidentiary hearing.

6. TEX. WATER CODE ANN. § 49.2122(b) only creates a presumption that *customer classes*, as opposed to rates, established by a district are properly established absent a showing that the district action establishing the classes was arbitrary and capricious.
7. LCRA has the burden of proof in this proceeding.
8. LCRA is a retail public utility under TEX. WATER CODE ANN. § 13.002(19).
9. TEX. WATER CODE ANN. § 13.002(19) does not require a retail public utility to use a test year, as defined in § 13.002(22) in setting its rates.
10. A retail public utility may use a future budget to set its rates, provided the budget is a reliable forecast of anticipated expenses. SOAH Docket No. 582-05-0003, TCEQ Docket No. 2004-0979-UCR, *Petition Requesting Review of Chisholm Trail Special Utility District's Rate Increase Pursuant to Texas Water Code Section 13.043*. (PFD issued Feb. 8, 2006; Order issued May 3, 2006) (*Chisholm Trail*).
11. The rates set by LCRA should not automatically revert to the pre-August 2007 levels. Instead, the Commission shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. TEX. WATER CODE ANN. § 13.043(e).
12. The rates established by this Order are just and reasonable, as required by TEX. WATER CODE ANN. § 13.043(j).
13. The rates established by this Order are not unreasonably preferential, prejudicial, or discriminatory but sufficient, equitable, and consistent in application to each class of customers, as required by TEX. WATER CODE ANN. § 13.043(j).
14. The methodology used to set the rates preserves the financial integrity of the retail public utility, as required by TEX. WATER CODE ANN. § 13.043(j).

15. TEX. WATER CODE ANN. § 13.043(e) allows the Commission to order refunds or allow a surcharge to recover lost revenues in a rate appeal.
16. If the rates established by this Order are below the interim rates currently in effect, LCRA shall refund the difference in the manner set out in the Findings of Fact that are part of this Order.
17. If the rates established by this Order are above the interim rates currently in effect, LCRA shall be allowed to recover the lost revenues in the manner set out in the Findings of Fact that are part of this Order.
18. Transcript costs should be assessed against LCRA, pursuant to 30 TAC § 80.23(d)(1)(F).
19. LCRA should not recover its rate case expenses pursuant to TEX. WATER CODE ANN. § 13.043(e).

III. ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Based on the above, the appeals of the City of Bee Cave and West Travis County MUD Nos. 3 and 5 from the rates set by the Lower Colorado River Authority (LCRA) for the West Travis County Regional Water System, and the appeal of West Travis County MUD Nos. 3 and 5 from the rates set by LCRA for the West Travis County Regional Wastewater System, are granted in part and LCRA is authorized to collect the following rates: _____.
2. Debt service coverage actually collected through rates, if any, should be accounted for in a restricted fund to be used for only capital improvements or reduction of debt service

within the West Travis County Region, or for contributions to operating reserves as required by the LCRA Board of Directors.

3. LCRA shall be assessed the full amount of the reporting and transcription costs.
4. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
5. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman
For the Commission