Lafayette City-Parish Consolidated Government

Lafayette Utilities System

LUS-Fiber

Forensic Examination Report
And Supplemental Information

August 12, 2020

CRI CARR RIGGS & INGRAM
CPAs and Advisors
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August 12, 2020

Mr. Josh Guillory, Mayor-President
Lafayette City-Parish Consolidated Government
705 W University Ave
Lafayette, Louisiana

Dear Mr. Guillory:

Carr, Riggs & Ingram, LLC ("CRI") was engaged to provide forensic services to the Lafayette City-Parish Consolidated Government ("LCG") for the purpose of investigating the internal affiliate billing transactions of the Lafayette Utility System's ("LUS") Fiber division ("LUS-Fiber") to all LCG affiliates for the fiscal years ("FY") 2011 through 2018. This report contains our observations and findings with respect to LUS-Fiber's affiliate billings for the period November 1, 2010 through October 31, 2018.

We have performed this engagement in accordance with the Statement on Standards for Forensic Services as promulgated by the American Institute of CPAs ("AICPA"). While our work involved analysis of accounting records, our engagement did not constitute an audit in accordance with generally accepted auditing standards, an examination of internal controls, or any other attestation or review service in accordance with standards established by the AICPA. Had other procedures been performed, other matters may have come to our attention that may have affected the findings reported herein.

Objectives

The objectives of our forensic engagement were to:

1. Gather information necessary to obtain a thorough understanding of the LUS-Fiber billing transactions that occurred in the period under investigation.
2. Conduct interviews with LUS and LUS-Fiber employees to gain an understanding of the relevant policies and procedures, processes, systems, and accounting activities of LUS-Fiber.
3. Perform a forensic analysis of the billing transactions of the LUS-Fiber division to LCG affiliates, including LUS.
4. Obtain and review documentation and/or other independent information sources to ascertain whether the transactions involving internal affiliate billings complied with Louisiana Revised Statues 45:844-51, the "Fair Competition Act."
5. Perform other analytics and investigatory procedures as considered necessary.
6. Document the results of our forensic procedures and any relevant evidentiary information in a formal report.

Scope

The scope of our investigation was initially limited to November 1, 2015 through October 31, 2018, which represents FY 2016-2018, but was extended to include FY 2011-2015 where applicable. Our scope was further limited by the availability and sufficiency of supporting documentation.

Background

LUS is a division of the LCG that provides electric, water, and wastewater services for the City-Parish of Lafayette, Louisiana. LUS-Fiber, previously a department of LUS until September 2018, provides telecommunications services, including internet, television, telephone, and other services, to individuals, businesses, LUS, other LCG affiliates, and other public entities in the Lafayette area.

In 2004, the City of Lafayette announced its proposal for a municipal fiber network that would provide broadband internet, cable television, and telecommunications services to residents and businesses throughout its service territory. The decision by LCG to enter into competitive lines of business through its LUS division prompted the state legislature to modify an existing bill in order to establish rules that would introduce some regulation over a municipal entity when it offers products and services in competition with the private sector. The passage of the modified legislation allows LUS-Fiber to offer its competitive video, broadband internet, and telecommunications services ("Covered Services") under the provisions of the Fair Competition Act ("FCA"), La. R.S. 45:844.4l et seq. The FCA, as its name implies, requires local governments that provide cable, telecommunications, and internet services to do so through fair competition.

The FCA required the Louisiana Public Service Commission ("PSC") to promulgate Cost Allocation and Affiliate Transaction Rules (the "Rules") to implement the FCA. The Rules require that "Transfers or sales of non-tariffed goods or services between the separate division created to provide the Covered Services and an affiliated division that are not provided to non-affiliated outside parties will be recorded under the full-cost accounting methodology."[1] This methodology requires LUS-Fiber to price non-tariffed services that are <u>not</u> provided to non-affiliated entities at LUS-Fiber's full cost of producing the service. In addition, under the Rules, if LUS-Fiber provides a service to non-affiliated outside parties, it can provide that service to affiliates at the "prevailing market price."[2]

Terry Huval was the director of LUS and LUS-Fiber from 1994 through his retirement in July 2018. During that period, business decisions such as updates to equipment, new telecommunication projects, and pricing decisions were approved by Huval.

In March 2018, an article entitled "ROBICHEAUX: The LUS Ratchet – Or is it Racket?" (the "Hayride Article")[3] was published, highlighting some unusual increases in the telecommunications budgets of LUS departments and the corresponding increases in the revenue of LUS-Fiber.

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[1] PSC General Order R-28270 (10/4/05), p. 10.
[2] Defined by the Rules as a generally accepted market value that can be substantiated by auction, appraisal, or clearly comparable transactions.
[3] Lunsford, M. (2018, March 7). ROBICHEAUX: The LUS Ratchet – Or is it Racket? *The Hayride.* Retrieved from https://thehayride.com/2018/03/robicheaux-lus-ratchet-racket/.

On April 12, 2018, LUS and LCG self-reported a potential violation of the FCA to the PSC regarding payments by LUS to LUS-Fiber for fiber services to LUS lift stations and capacitor banks ("Cap Banks") that LUS was unable to utilize. The PSC then directed a compliance audit of LUS pursuant to the FCA for FY 2017. On July 8, 2019, LCG self-reported a second potential violation of the FCA to the PSC, regarding payments by LUS to LUS-Fiber for a power outage monitoring service priced on projected cost savings to LUS customers instead of LUS-Fiber's cost to provide it. Both audits remain open as of the date of this report.

Subsequent to the July 8, 2019 letter, former LCG Mayor-President Joel Robideaux conducted an internal review of LUS-Fiber's other affiliate service accounts for FY 2017 to determine whether there may be any other potential FCA or Rule violations, and to self-report any concerns that were identified. The report, dated December 16, 2019, noted several instances where charges for services to affiliates exceeded those charged to non-affiliates for the same, or similar, service, which may have resulted in a violation of the Rules. The report also concluded that in at least one instance, charges for services that were only provided to affiliates were not provided at LUS-Fiber's cost and may have violated the Rules.

On February 11, 2020, CRI was engaged by LCG through its attorney, Gregory Logan, to conduct a forensic analysis of the internal affiliate billing transactions of LUS-Fiber to all LCG affiliates.

Source Documents

A listing of the documents that we examined in connection with our forensic investigation is included as Appendix A.

Summary of Procedures Performed

1. In order to gather information regarding the activities and inner workings of LUS-Fiber and to gain an understanding of the practices, policies, and procedures during the period under investigation, we conducted interviews with the following LUS and LUS-Fiber personnel and their outside CPAs:
    a. David Bertrand
    b. Hunter Boudreaux
    c. Gregory Labbé
    d. Derik Godeaux
    e. Ryan Meche
    f. Donald delaHoussaye
    g. Chris Domingue
    h. Craig Gautreaux
    i. Teles Fremin
    j. Renata Alexander
    k. Matthew Suire
    l. Skyler Williams
    m. Jeffrey Stewart
    n. Lowell Duhon
    o. Burton Kolder
    p. Bryan Joubert

2. We listened to the audio recordings and read selected transcripts of prior interviews of current and former LUS-Fiber and LUS employees conducted by Oats & Marino.[4]
3. We reviewed email correspondence between, or among, Terry Huval, other LUS-Fiber and LUS employees, and outside consultants from 2007-2018.
4. We obtained, reviewed, and analyzed records of LUS-Fiber billings for FY 2016-2018 directly from their billing system.
5. We compared the LUS-Fiber billings to affiliates to billings of non-affiliates where applicable to determine if a market price for similar services was available, or applicable.
6. We inspected invoices from LUS-Fiber to customers to determine the amounts that were being charged to different entities for the same services.
7. We reviewed the charges for each relevant service to determine if these amounts were reasonable.
8. We reviewed the methodology used to calculate the interest associated with the lift station and Cap Bank reimbursement to determine if the interest amounts given were adequate.

Findings

The following summarizes the findings of our investigative procedures described above. The appendices attached to this report provide additional information related to our findings.

POMS

Background

The LUS electrical distribution grid consisted of 3,574 electrical distribution taps,[5] each providing electrical service to a number of customers ranging from several to hundreds.

The Power Outage Monitoring Service ("POMS") was described by Huval in internal and external correspondence as a notification system that enabled LUS to respond to power outages on a more timely basis. POMS used software developed by LUS to send an alarm whenever power was interrupted to the LUS-Fiber Optical Network Terminals ("ONT").[6] Huval claimed the system reduced outage durations by allowing LUS to pinpoint the affected tap, thus enabling LUS to direct the technician to the specific location. Based on emails between Huval, Mike Boustany, former Electrical Operations Manager, and Mike Talley, Electrical Engineer III, the software interface appears to have been partially operational in October 2010.

The system required two or more ONTs (i.e. two or more fiber customers) on any given tap to simultaneously recognize a power outage in order for an alert to be generated. According to internal emails, the system only covered 989 out of 3,574 taps and was having issues.[7] Under the assumption that the software was working correctly, only 27.7% of the grid would have benefited from the system.

[4] Assistant City-Parish Attorneys assigned to represent the LUS division.
[5] A branch from a main electrical feeder line, often called a lateral tap or tap.
[6] ONTs are mounted on the side of LUS-Fiber customers' homes or businesses.
[7] Per emails, issues included old alarms still populating the list and a periodic server crash.

POMS – FY 2011

In our review of Huval's emails in the initial two years of POMS, we noted the justifications and pricing underwent several revisions prior to being promulgated to LCG and those outside of his inner circle.[8]

According to Huval's October 12, 2010 internal email and memo,[9] he initially intended to have LUS-Fiber provide this service to LUS at a cost of $15 per *covered tap* per month, further noting, "*LUS does not have to pay for any taps where there are not yet any LUS-Fiber customers, so the citywide system can be created gradually*."

The following day, after learning only 989 of the taps were covered, Huval modified the terms of the POMS service to reflect a price of $24,725 per month in his October 13, 2010 email[10] to Boustany, noting:

"*Whatever price is charged has to be one we can adequately justify. I don't think we could get this from anyone else for less than $25/month per tap, so that is where I would like to start for the taps with 2 or more fiber customers - then increase the taps on a month-to-month basis as we get more fiber customers*."

The final 2010 version dated November 15, 2010 (the "2010 POMS Memo"),[11] proposed POMS charges of $20,145 per month based primarily on twenty percent of the system's expected 20-minute reduction in the "cost" of outages to LUS customers. The outage cost to customers was based on a report by the Lafayette Economic Development Authority ("LEDA") [12] concluding that a 60-minute, LUS-wide power outage costs LUS customers a total of $897,032 (see LEDA Study Analysis below). To add further justification to the memo, Huval contrasted his proposed monthly price with the cost of providing a basic phone line and other equipment to all 3,574 taps,[13] estimated by LUS-Fiber to be $714,800 for initial setup and a recurring $107,220 per month.

In a November 16, 2010 email to accounting,[14] Huval, as director of LUS and LUS-Fiber, both recommended[15] and approved the use of the proposed POMS system and required billing to be begin immediately.

POMS – FY 2012-2018

Eight months later on July 19, 2011, Huval proposed an increase in the POMS service to $704,693 annually, based on a savings study provided by a utility company in Tennessee. Later that evening, Huval received an email from Kerney Simoneaux, an LCG accountant, clearly notifying him of the requirement to use the

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[8] The inner circle included former Engineering, Power, and Communications Manager Frank Ledoux, Mona Simon, Consultant Doug Dawson, and less frequently, Boustany, Teles Fremin, and Financial Operations Supervisor Antonio Conner (the "Inner Circle").
[9] See Appendix B-1.
[10] See Appendix B-2.
[11] See Appendix B-3.
[12] See Appendix B-4 for 2010 Rates and Outages.pdf attached to an email from LEDA research coordinator Meg Segura dated October 29, 2010.
[13] It should be noted that the system Huval proposed only covered 989 taps, thus the comparison was misrepresented.
[14] See Appendix B-3.
[15] Though the final version was purportedly a recommendation from Boustany to Huval, evidence clearly demonstrates the "recommendation" was pushed down from Huval to Boustany.

full-cost accounting methodology to calculate the price for this service since it was provided only to affiliates.[16]

The following morning, Huval forwarded Simoneaux's email to LUS's attorney for PSC matters, Randy Young, stating, "*This is an effort I have been leading to have LUS pay LUS-Fiber for the new capability LUS has to more quickly detect and respond to power outages. LUS is already paying fiber about $20,000 a month for this service, but a recent study we acquired through our friends in Chattanooga includes information that suggests that it could be justified that LUS pays more…However, <u>Kerney sent me something last night that may throw water on our aspirations for this to become a significant LUS-Fiber revenue source</u>. I am not sure what the implications are and I need a quick read from you on it* [emphasis added]."[17] In the same email, Huval indicated he was meeting with the LEDA economist to discuss revising the prior study and was trying to have the new POMS pricing resolved by 9:30am in order to submit for the FY 2012 budget.

Huval also emailed his staff that morning, stating, "*I am waiting on a call from Randy Young with Kean Miller to discuss this in light of Kerney's indication to me that <u>we may only be able to use full cost accounting to calculate this cost/value, per the Cost Allocation Manual</u>* [emphasis added]."[18]

Later that morning, after receiving an updated report from LEDA increasing the estimated savings to LUS customers, Huval directed that the POMS charge be increased to $84,450 per month, effective November 2011.[19] The new LEDA report[20] concluded that a reduction in average power outage duration by 20 minutes would now save LUS customers $2.03 million per year instead of $897,032, notwithstanding that the number and type of customers and the kWh used remained essentially the same. Additionally, instead of charging a "conservative" twenty percent of projected savings, Huval increased the charge to fifty percent.

Accordingly, the budget revision was requested via email by 12:30pm that afternoon and included in the FY 2012 formal budget on July 25, 2011.

Later that week, the prior year's internal memo justifying the service was revised to reflect the new study, increased price, and date of July 20, 2011. The revised memo (the "2011 POMS Memo")[21] stated the following:

"*LUS has looked for options to monitor tap locations, but until now the cost to do so for the 3574 taps on our system was prohibitive…It is indeed providing us with information that allows us to pinpoint the affected tap…If LUS were to reduce the average length of power outages from 1 hour to 40 minutes (a 20 minute reduction in the average power outage duration), that LUS customers would save $2.03 million*

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[16] Simoneaux email to Huval dated July 19, 2011 See Appendix B-5.
[17] Huval email to Young, 7/20/2011. See Appendix B-6.
[18] Huval email to staff, 7/20/2011. See Appendix B-7.
[19] See Appendix B-8 for email dated July 20, 2011. According to LUS-Fiber billing records for FY 2012, the new price did not take effect until September 2012. However, LCG records indicate the back billing of $643,050 was processed via journal entry in June, July, and August 2012.
[20] See Appendix B-9.
[21] The 2011 POMS Memo and related emails are included in Appendix B-10.

according to the analysis in this study. I suggest we use approximately half of this savings to pay for the cost of this unique early outage detection."

On June 26, 2013, in response to a request for information on POMS from Bryan Joubert, an auditor with Kolder, Champaigne, Slaven & Company, LLC ("KCSC"),[22] Conner provided the 2011 POMS Memo and a letter from Huval to Conner, dated June 25, 2013. The letter described the purported benefits realized from POMS, concluding, "***We know of no lower cost alternatives that would cover over 3,500 locations at a lower cost than this approach.***"[23] In response to a follow up email requesting information or cost estimates of the other outage monitoring alternatives that LUS reviewed, Huval provided similar cost estimates used internally the prior year, namely $714,800 for initial setup and a recurring $127,162 per month. Satisfied with that response, KCSC asked no further questions.

Later in 2013, LUS completed the implementation of the Smart Meter system, which provided, among other features, the capability to identify outages on every meter in real-time. Thus, the POMS service, whose value was questionable to begin with,[24] no longer served a purpose. Yet, a reduction to the POMS charges was not considered in 2013 or thereafter.

In 2017, the POMS interface with the electric monitoring and dispatch center was not operating for several months. This went unnoticed until Boustany sent an email to Talley inquiring about the status, "*It is budget time again and I have been asked if the 'LUS-Fiber Outage Alert System' is up and functioning properly…<u>Terry would like the system to continue working, just in case we get a question about it at budget hearings</u>* [emphasis added]."[25]

Prior to his retirement, Huval wrote an internal memo to be filed,[26] confirming the basis of POMS was cost savings, allocating all of the outage improvement to POMS,[27] while claiming the recommendation was made by Boustany.

For FY 2011-2018, LUS spent a total of **$7,329,784** on the POMS service. The POMS charges of $84,450 per month continued through July 31, 2019, while the 2011 POMS Memo justifying the price remained the basis for its pricing, unchallenged by the PSC or KCSC auditors.

Table 1

POMS REVENUE FY 2011-2018

2011*	2012	2013	2014	2015	2016	2017	2018
$ 235,984	$ 1,013,400	$ 1,013,400	$ 1,013,400	$ 1,013,400	$ 1,013,400	$ 1,013,400	$ 1,013,400

*Charges for November and December 2010 were recorded via journal entries to accounting unit 5027032, account 70907, activity 50201100011, subledger 15930 and did not appear on LUS-Fiber's billing for POMS.

[22] The audit firm engaged to conduct the FCA compliance attestation audits of LUS and LUS-Fiber.
[23] See Appendix B-10.
[24] During interviews with LUS attorneys and later with CRI, several employees questioned its necessity or usefulness.
[25] See Appendix B-11.
[26] See Appendix B-12.
[27] Per LUS Electric Operations, improvements in outage duration likely stemmed from tree trimming, equipment upgrades, and the Smart Meter system.

Findings:

LEDA Study Analysis

The LEDA Report used by Huval to price the POMS service in 2010 was based on an estimate of what a consumer *would pay* to not have a black out, thus it represented a theoretical opportunity cost, not an actual cost. The report was based on a study of the 2003 **72-hour** Northeast Blackout[28] and other studies conducted in the 1970s and 1990s and concludes consumers *would pay* 117 times the retail price to avoid outages. The 2011 report was based on a 2003 analysis of electrical outage cost surveys conducted by eight different companies in the previous two decades and attempts to calculate the total outage costs *to the consumer*. Thus, it represented a theoretical opportunity cost as well. Neither study attempts to provide the impact of an outage to the revenues of LUS or LUS-Fiber.

Notwithstanding these issues, both LEDA calculations are based on the highly unrealistic assumption of an hour outage of the entire LUS system, ignoring the fact that outages typically affect only small portions of the system. Furthermore, Huval allocated 100% of the flawed "cost savings" to the POMS system, ignoring that the actual outage coverage POMS provided was only to a fraction of the electrical distribution system.

Duplicitous Intentions

Emails in 2010 between Huval and his Inner Circle indicate POMS was merely a minor additional revenue stream to LUS-Fiber. This would change with the financial pressures in July 2011.

On the evening of July 18, 2011, Huval was notified by Lorrie Toups, Chief Financial Officer of LCG, via email that his LUS-Fiber budget for the next year was out of balance and showing a $710,850 shortfall.[29]

The following morning, Huval reached out to Dawson who suggested, "*One easy place to balance the budget is to show that you will not be making those* [loan] *payments…**Otherwise, you'll have to arbitrarily increase revenues just to make it work*** [emphasis added]."[30] It appears Huval did just that. Thus, the idea of the POMS price increase was born. After setting up an initial cost savings model for POMS, Huval emailed Toups stating, "*We are looking at making further changes in revenues for LUS-Fiber (and corresponding costs for LUS). I'll be with you on those by end of today*."[31] Huval would implement his plan the following day, as detailed in the background section above. The resulting net increase in POMS revenue of $771,660 would more than cover the budget shortfall.

Documents and emails illustrated below, and in subsequent sections, evidence the frequency with which Huval arbitrarily adjusted and inflated LUS-Fiber's revenue.

[28] The Northeast Blackout of 2003 left 50 million people without power for 72 hours. While it is reasonable to assume that anyone subjected to a 72-hour blackout would pay dearly for a reduction of the outage, the resulting costs cannot be correlated to a reduction of 20 minutes to a small portion of customers in 2010 in the Southeast.
[29] See Appendix B-13.
[30] See Appendix B-14.
[31] See Appendix B-15.

November 11, 2010 email from Huval regarding problems with the POMS interface: "*Thanks! Once I get this system working reliably, we can get a new revenue stream for LUS-Fiber*."[32]

July 29, 2011 email from Huval to Dawson updating cash flow projections: *"…In addition – did you include in future revenues our proposed "Electric Outage Alert" system? While LUS is paying fiber about $20k per month for that now, that number will increase to about $90K per month beginning in November 2011. Would it be to our advantage to "front load" those payments – i.e., take the entire $1 million in November? Also, Andrew's smart grid project will be paying about $500k in the upcoming FY for connectivity. Again, this is another area where we could possibly front load those payments* [emphasis added]."[33]

Violations of FCA and the Rules

We were not able to identify any documentation evidencing analysis or consideration of LUS-Fiber's cost of providing POMS as required under the Rules. As corroborated by interviews of LUS and LUS-Fiber staff and an extensive review of emails, no such consideration was performed. Notwithstanding LUS's own cost allocation manual (the "Manual"), the only other identified reference by LUS staff to the requirement to use the full-cost accounting methodology to calculate the charge was Simoneaux's July 19, 2011 email, which Huval intentionally circumvented.

However, we did discover emails establishing that Huval had been reminded of the FCA rules on cost-allocation by two different consultants on August 6, 2010 and again on September 7, 2010. Yet, Huval would not give up on his "new revenue source." Instead, on October 2, 2010, Huval reached out to Dawson, "I *want LUS to pay LUS-Fiber for this service - but I don't know how much. Do you have any idea on how we could price this?*"[34] Thus, the 2010 POMS Memo was born.

As Huval was aware, "*Transfers or sales of non-tariffed goods or services between the separate division created to provide the covered services and an affiliated division that are not provided to unaffiliated outside parties will be recorded under the full-cost accounting methodology*."[35] As a non-tariffed service provided only to LUS-Fiber, the Rules required LUS-Fiber to charge a price for POMS that was based on the full cost of providing the POMS service. Basing the POMS charges on a portion of the estimated cost savings (i.e. benefit) to LUS customers instead of the actual cost to LUS-Fiber to provide the service was an improper affiliate charge and was not compliant with the Rules or the Manual.

According to statements from LUS staff, and acknowledged by Huval, the equipment was already in place and the interface was already designed by LUS, not LUS-Fiber. Thus, there was minimal cost to LUS-Fiber associated with the POMS service. Given that the charge exceeds the full cost of providing the service, the charges may violate the requirement of the FCA that "(a) local government may not cross-subsidize its covered services with tax dollars, income from other local government or utility services, ... or any other means." [36]

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[32] See Appendix B-16.
[33] See Appendix B-17.
[34] See Appendix B-18.
[35] See Appendix B-19.
[36] La. R.S. 45:844.53(2)

Misrepresentations and False Statements

In direct contradiction to the 2011 POMS Memo and the June 25, 2013 letter sent to KCSC, Huval stated in his April 9, 2020 interview with LUS attorneys that no alternative options to POMS were pursued; there was negligible cost since the equipment was already in place; and "*they weren't monitoring taps*."

The 2010 and 2011 POMS Memos and various related emails intentionally misrepresented the POMS system and its benefits in order to internally justify using LUS cash to grow the revenues of LUS-Fiber. In addition, Huval used the 2011 POMS Memo and his June 23, 2013 letter to make misleading representations to KCSC auditors and PSC staff with the intention of inducing reliance on those documents.

In making intentionally misleading or false statements, Huval may have violated one or more state laws.[37]

Other Observations:

In his April 9, 2020 interview with LUS attorneys, Huval claimed to have numerous discussions with Kolder about how to price POMS in connection with the FCA. Huval further stated he met with Kolder the morning of July 20, 2011 at which time Kolder "*had some piece of paper… showing that the price we were looking to charge, the one million dollars…was substantially less than the full-cost accounting method*." Huval repeatedly states that he relied on Kolder's opinion that he was compliant since the price he was charging was cheaper than the full-cost methodology.

However, Kolder flatly denies meeting with Huval, providing an opinion, or even discussing POMS on July 20, 2011. To the contrary, according to documentation provided by KCSC, Kolder was at a continuing education course from 8:00am until 4:00pm, followed by meetings with another client. Furthermore, while numerous Huval emails consistently rely on customer savings as the basis for the pricing of POMS, there is no reference to meeting or discussing POMS with the auditors until June 2013. According to Joubert, June 2013 was the first occasion he learned of the POMS service.

With regard to the attest audits conducted by KCSC, we noted the following:

While the information from Huval and Conner was misleading, KCSC auditors appeared to accept at face value LUS's 2011 POMS Memo and the Jun 25, 2013 letter and assertions contained therein, despite evident FCA issues and contradictions.

KCSC's workpaper titled "Reasonableness of Retail Billings," dated October 31, 2012, concluded, "*Per review of the supporting documents, it appears that the sales of services between affiliated divisions are being charged at a reasonable market price and is consistent with the requirements of the Fair Competition Act*."[38] However, KCSC did not obtain adequate documentation to support these conclusions. The workpaper merely parroted the information provided by Huval and Conner.

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[37] La. R.S. 14:133 (A) states, "Filing false public records is the filing or depositing for record in any public office or with any public official, or the maintaining as required by law, regulation or rule, with knowledge of its falsity, or any of the following: (1) Any forged document. (2) Any wrongfully altered document. (3) Any document containing a false statement or false representation of a material fact."

[38] See Appendix B-20.

An additional workpaper was produced by KCSC[39] to the LUS attorneys. This workpaper was intended to demonstrate that the price, using a full-cost accounting approach, was significantly higher than the $1,013,400 charged by LUS-Fiber. However, KCSC's calculated "full cost" was critically flawed and reflected a lack of understanding of both a "covered service" and the manner with which costs are allocated. KCSC's approach began with the total of **all** direct and indirect costs, irrespective of the service related to that cost, and divided that amount by **all** users. That number was then multiplied by **all** tap locations.

It should also be noted that the cost allocation workpaper was created after KCSC was contacted by the LUS attorneys in 2019, not in 2013 when the audit was conducted.

Though engaged to audit LUS and LUS-Fiber's compliance with the FCA and the Rules, KCSC did not appear to understand the requirements of the Rules, in particular the rules requiring a full-cost accounting for non-tariff, affiliate-only services, and the rule describing how that accounting was to be performed.

Lift stations

In 2010, LUS Wastewater was comprised of four treatment plants and 152 lift stations scattered throughout Lafayette, while the LUS Water Treatment Division was comprised of five water plant towers, two wells, and two water plants.

The process for monitoring the 152 lift stations varied and are detailed below:

- Thirty-five lift stations were actively being monitored via radio telemetry through the LUS SCADA[40] system, which does not incur any cost to operate.
- Ten lift stations were using Mission auto-dialers to notify the on-call mechanic when high levels triggered an alarm, which costs $40 per month to operate.
- The remaining 107 lift stations had a light at the top of the station that began flashing red when an alarm was trigged, with a sign instructing citizens to report the lift station to LUS Wastewater. Based on discussions with Craig Gautreaux, LUS Wastewater Operations Manager, the system worked well and cost a total of $400 per month in outside service fees to operate.

In November 2010, according to emails and witness statements, LUS-Fiber was under cash flow pressure and needed to develop additional sources of revenue. Huval, through Ledoux, directed the Water and Wastewater departments to identify sites where fiber could be connected, as a means to increase revenue to LUS-Fiber. The emphasis continued into early 2011 as illustrated in the following emails:

"*Marlin I am no expert on what we need. I need to pay what I need to help fiber so I will defer these decisions to your staff of experts.*"[41]

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[39] See Appendix B-20.
[40] SCADA, which stands for supervisory control and data acquisition, refers to a computer system used for gathering and analyzing real time data. SCADA systems are used to monitor and control a plant or piece of equipment.
[41] Gautreaux email dated November 11, 2010. See Appendix C-1.

"*Just wanted to let you* [Huval] *know before you call me that I requested internet sites for water wells and towers*."[42]

The directive resulted in Wastewater "requesting" fiber installations for the 35 stations already being monitored by SCADA. Despite the fact that these were the newest stations and had been outfitted with control panels, Ledoux and Huval were told that the panels would require research, additional equipment, and reconfiguration[43] before they would be in a position to utilize a fiber connection. With upgrades costing approximately $3,500 to $4,300 each, the rollout for the initial 35 stations (the "Phase One Stations") was suspected to take two to three years to complete and cost at least $136,500 to equip[44].

Huval authorized LUS-Fiber to begin connecting fiber to the lift stations in December 2010. Though a March 23, 2011 status email reported 13 sites with fiber but **zero** sites operational[45], Huval authorized LUS-Fiber to commence billing for 22 stations. By February 2012, 30 of the Phase One Stations were being billed for 10Mbps–Internet service with a monthly total of $1,949.[46]

Notwithstanding Wastewater's inability to utilize the fiber connectivity in a timely manner, Huval's emphasis on building LUS-Fiber's revenue continued to be evident through 2012 and 2013, as illustrated in Gautreaux's emails below.

"Terry looking for additional revenue for fiber, is there other pressure points[47] that we need to monitor"[48] Nov 12, 2012

"If the marching orders are to install something at each lift station, we would probably start with an internet capability at each."[49] Jan 10, 2013

In May 2013, another meeting was called with water, sewer, and electric managers to identify additional locations to install fiber to drive revenue to LUS-Fiber. Though the installation and setup of the Phase One Stations was not complete, Wastewater was directed to connect 66 more lift stations ("Phase Two Stations") and four plants to use 10Mbps VPLS, budgeted at $210 each monthly. As department heads expressed concerns about their budgets, Huval assured them that the funds covering these new monthly fees would be put in their telecommunications accounts via a mid-year budget amendment, a tactic frequently used by Huval in the coming years. Shortly after, on May 28, 2013, the budget amendment was finalized, with LUS-Fiber anticipating an increase of over $45,000 per month.

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[42] Gautreaux email to Huval dated March 7, 2011. See Appendix C-2.
[43] Each control panel required a transition from controls communicating via radio telemetry to instead utilize programmable logic controllers communicating through a network connection.
[44] The 35 stations multiplied by $3,900 [the average of $3,400 and $4,300].
[45] The fiber connections were made to LUS-Fiber's ONT device, which was attached to the structure, but no connection could be made to the lift station equipment. An "operational" connection meant the station communicates with SCADA.
[46] This amount would be retroactively increased to $6,300 as described later in this report.
[47] Water pressure monitoring points.
[48] See Appendix C-3.
[49] See Appendix C-4.

As Huval was aware, these Phase Two Stations were older and did not have control panels from which to make a connection nor did they even have 110-volt receptacles necessary to plug in equipment. Electrical receptacles would have to be installed to plug in LUS-Fiber's ONT and the Control panels would have to be designed, engineered, and tested, a process that would end up taking more than four years and incur a substantial cost to engineer a solution. The first prototype[50] was successfully installed in May 2018. According to purchasing records from April 2016 to July 2020, hardware costs to outfit the remaining panels were approximately $217,883, while $480,586 was spent on contract services to install the panels.[51]

According to LUS-Fiber records, billings for nine of the lift stations began in June 2013 and included a back billing of two to three months. Billings appear to increase over the next few months and by December 2013, 54 of the Phase Two Stations were being billed for 10Mbps VPLS with a monthly charge of $11,340. The original 30 of the Phase One Stations had continued to be billed at $1,949 for 10Mbps–Internet through December 2013 as well.

Findings:

Emails and witness statements indicate the installation of fiber at the lift stations was merely an effort to provide additional revenue to LUS-Fiber. As corroborated by interviews with LUS employees and emails[52] among the Inner Circle, it is evident there was no departmental need for the transition, as illustrated by Gautreaux's statement:

"*They naturally were looking for the best use of the fiber within LUS between water, sewer and electric and city hall, Frank Ledoux had set up a meeting to see what we could contribute to fiber*."[53]

The monitoring costs prior to these upgrades were minimal. In contrast, the costs incurred by LUS to set up the lift stations with the appropriate equipment to receive fiber services was at least $136,500 for the Phase One Stations and at least $698,469 for the Phase Two Stations.[54] Consequently, the total cost to equip the lift stations in order to increase revenues to LUS-Fiber was $834,969, and was passed down the LUS ratepayers. It should be noted that the total cost <u>does not include</u> the monthly LUS-Fiber service charges.

Given that the conversion of the lift stations was driven by Huval's arbitrary decision to increase LUS-Fiber's revenue and did not appear to be based on an identified need, these transactions appear to represent cross-subsidies of LUS-Fiber by LUS, in violation of the FCA.

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[50] Between FY 2014 and 2016, the remaining five Phase One Stations and one of the Phase Two Stations were completed.

[51] Reflects hardware costs for June 2016 to August 2019 only. Costs for the entire project may be substantially higher but have not been provided at this time.

[52] See emails previously discussed and other illustrative emails included in Appendix C-5.

[53] Gautreaux's internal memorandum to Rick Zeno, LUS Human Resource Manager, dated September 6, 2018. See Appendix C-6.

[54] See Appendix C-7 for the lift station upgrade costs that we obtained.

2013-2014 Service Upgrades and Additions

Following the lift station revenue increases described above, cash flows were projected by Dawson to remain an issue in the next fiscal year. Emails in July 2013 reflect discussions between Huval and his Inner Circle pertaining to the imputed tax payments[55] due early the following fiscal year. The imputed taxes were estimated to be approximately $1.1 to $1.2 Million and were likely payable by January 2014. The imputed tax payments were projected to affect LUS-Fiber's cash flow in such a manner whereby LUS-Fiber would be unable to pay down other cash loans, which could raise negative political attention. However, if LUS-Fiber was unable to make the imputed tax payment, it would be forced to record the amount due as a note payable to LUS.

Huval and Dawson solved this problem by generating more LUS-Fiber revenue through LUS service charges as illustrated in the emails below.

July 23, 2013 email from Dawson to Huval discussing cash flow strategy: "*Since you are planning to find a way for LUS to bill* [from LUS-Fiber] *enough to then have fiber be able to pay for the imputed taxes, you have that pile of money to play around with. Let's just assume for now that imputed taxes will now be about $1.1 M each year for the new taxes. Since LUS-Fiber will be billing LUS approximately that amount, they could use that cash interchangeably to pay either the LUS imputed tax bill or ILOT.*"[56]

July 26, 2013 email from Dawson to Huval updating the cash flow model: "<u>*This model has you generating $1.1M per year in new revenue from LUS in order to not incur new imputed tax loans*</u>. *There is one big upside to this scenario, which is that we can then tell the outside world that you are now currently covering imputed taxes...But every scenario I look at takes 4 – 5 years to pay off the current cash loan. This is because at the current customer count you are just barely above water, so the amount of cash available to pay on that loan is pretty slender. So I have* <u>*an alternate idea, which is to go ahead and charge LUS an additional $1.1 M per year in new services, but then use that money to pay off the cash loan instead*</u> *of the new imputed taxes. Your overall debt balance will be the same but* <u>*it gets rid of a political issue a lot faster*</u> [emphasis added]."[57]

As illustrated in the following statement from Gautreaux, the need for the additional $1.1 million in LUS-Fiber revenues was relayed to LUS department managers.

"LUS-Fiber needed additional revenues to offset imputed taxes that were starting to hit LUS-Fiber. Frank came up with the idea of providing additional megs of service to water, sewer and electric to have us pay more revenue to the fiber system."[58]

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[55] LUS-Fiber's imputed taxes are obligated to be included in its rates in an amount equal to all taxes, fees, and other assessments that would be applicable to a similarly situated private provider of the same services in accordance with the Louisiana Public Service Commission (LPSC) Cost Allocation and Affiliate Transaction Rules as adopted by the LPSC on September 14, 2005. The applicable imputed taxes include property, franchise, and sales taxes and were payable to the Utilities System.
[56] See Appendix D-1.
[57] See Appendix D-2.
[58] See Appendix C-6.

In November 2013, a report critical of the LUS-Fiber project was published by Steven Titch (the "Titch Report") casting doubt on the success of their venture into broadband and raising questions regarding the LUS budget increases relating to LUS-Fiber services.[59]

Despite of the negative publicity received following the Titch Report, Huval's plan to cover LUS-Fiber's imputed tax payments through new LUS service upgrades and additions continued.

CRI discovered the details of the intended service upgrades and additions in a spreadsheet attached to a January 2014 email from Fremin requesting Simon to review the changes and send them to Huval. These service changes are identified in Table 2 below.

[59] Titch, S. (2013, November). Lessons in Municipal Broadband from Lafayette, Louisiana. *Reason Foundation, (Rep. No. 424)*. Retrieved from https://reason.org/wp-content/uploads/files/municipal_broadband_lafayette.pdf. See Appendix D-3.

Table 2

Division	Description	LUS Fiber Service Description	# of Sites	Notes: (Justification/new service)	Yearly Total (Increase)
Services Upgrades:					
Wastewater (770)	Sewer Plant	10M Business Internet	1	Increase to 125M DIA on 5 year contract	$ 2,821
Wastewater (770)	Liftstations	10M Internet (should be 10M VPLS)	30	Increase 10M VPLS to 30M VPLS; also back bill from Oct 2011 at 30*(210-64.95)	127,818
Wastewater (770)	Liftstations	10M VPLS	18	Increase 10M VPLS to 30M VPLS	45,360
Water Operations	Water Well	1.5M SPR	8	Increase 10M VPLS to 30M VPLS	20,160
Water Operations	Water Well	3M SPR	3	Increase 10M VPLS to 30M VPLS	7,560
Water Operations	Water Plant	100M VPLS	2	One of these needs to be moved to wastewater bill	-
Water Operations	Water Plant	100M VPLS	2	Increase the rate for the 100M VPLS to the standard rate of $680	11,521
Water Operations	Pumping Station	10M VPLS	2	Increase 10M VPLS to 30M VPLS	5,040
LUS - AMI	Gatekeepers	GateKeeper - VPLS	70		71,198
Wastewater	Liftstation	1.5 SPR	1	Move from 1.5M SPR to 30M VPLS	2,520
Power Production	Power Plants	10M SPR	1	Increase from 10M SPR to 100M SPR at 60 Months	1,932
Electric	Substations	10M SPR	17	Increase from 10M SPR to 100M SPR at 60 Months	15,504
Electric	Dark Fiber	10 Dark Fiber	1	Price the Dark Fiber correctly (mona provide more info)	184,020
LUS	Wireless	24 Wireless (10M SPR)	35	Increase the radio count to 35 at 10M SPR (35*354=12390*.89=11027.11 MRC	35,281
Subtotal					**$ 530,735**
Division	**Description**	**LUS Fiber Service Description**	**# of Sites**	**Notes: (Justification/new service)**	**Yearly Total (Increase)**
New Services:					
WasteWater	Lift Stations	10 Mbps VPLS service at each site	33	Change from 10M VPLS to 30M VPLS	$ 166,320
WasteWater		11 Mbps VPLS service at each site	12		60,480
WasteWater	South Sewer Plant	100 Mbps VPLS service at South Sewer Plant for aggregating all camera circuits.	1	Correct rate from 630 to 680	8,160
Water operations		10 Mbps VPLS service at each site	1	Change from 10M VPLS to 30M VPLS	5,039
Electric	Switched Capacitor Banks	10 Mbps VPLS service at each site	87	Change from 10M VPLS to 30M VPLS	438,480
Electric	Dark Fiber for LUS IT	4 fibers (2 overhead and 2 underground)	1	Begin billing and back bill to Jan 2010	16,800
UL		6 fiber	6	Bill LUS; LUS to bill UL	41,040
Electric	Fiber Lease	Fibers used for reclosures	10	Change from SPR to 30M VPLS	50,400
Subtotal					**$ 786,719**
TOTAL					**$ 1,317,454**

CRI examined the billing details related to the services indicated above, noting back billing charges that go back to November 2013, and, in some cases, much further. With the exception of back billings, we noted very little changes between the proposed amounts identified in the table above and the actual billings. The details relating to each department's changes are further discussed below.

With Wastewater, we noted the following January 2014 billing changes:

- The existing 30 lift stations were upgraded to 10Mbps VPLS retroactive to November 2011. A corresponding credit for the 10Mbps Internet was applied. The monthly price for those 24 months, net of the credit, was $4,352.
- The same 30 stations were then upgraded to 30Mbps VPLS effective retroactive to November 2013, a back billing of two months with a new monthly recurring price of $12,600.
- The billings for the older 54 lift stations that were still not operational were increased to 64 lift stations and upgraded to 30Mbps VLPLS from 10Mbps VPLS, effective November 2013, a back billing of two months with a new monthly recurring price of $26,880.
- Other Wastewater plants and facilities received upgrades as well resulting in a new monthly recurring price of $980.
- In total, the service upgrades and additions cost Wastewater $191,801 in January 2014 and $40,460 per month thereafter, a monthly increase of $28,296. In 2015, the number of lift stations being billed increased to 100 and the monthly charge rose to $42,000.

With Electric Operations, we noted the following January 2014 billing changes:

- The total 87 Cap Banks that were installed and active as of December 2013 were increased to 142 and upgraded to 30Mbps VPLS.
- Out of the 142 total Cap Banks, 101 were back billed two months to November 2013, while 39 were back billed to December 2013.
- In total, the arbitrary service upgrades cost Electrical Operations $118,002 in January 2014 and $62,580 per month thereafter, a monthly increase of $41,370.

With LUS AMI Gatekeepers, we noted the following January 2014 billing changes:

- The 70 AMI Gatekeepers[60] were upgraded from 30 Mbps VPLS to 100 Mbps VPLS, effective November 2013, resulting in a back billing of $95,200 and an increase of $5,933 per month thereafter.[61]

With LUS Network Engineering, we noted the following December 2013 billing changes:

- LUS Network Engineering was back billed 48 months to January 2010 for the Fiber Lease service at a monthly cost of $1,400, resulting in a total of $67,200.

[60] Advanced Meter Infrastructure Gatekeeper – Gatekeeper devices read data from customer meters on a schedule or upon request.
[61] Analysis of the LUS AMI Gatekeeper billings is the subject of a subsequent section of this report.

- For the Internet 1Gbps service, they were back billed for seven months to May 2013 for a total cost of $6,833, comprised of the partial month of $833.30 and six full months at a monthly rate of $999.95.
- The charges related to these services included back billings of $76,620 and a monthly charge of $2,999.95 thereafter. LUS-Fiber described these charges as a correction for services that were provided since 2010 but was invariably unbilled. The validity of these charges is questioned due to the nature of the back billing, the emphasis for increased revenue, and the common directorship.

With Water Operations, we noted the following January 2014 billing changes:

- The existing 14 pressure points at the time were upgraded to 30Mbps VPLS effective retroactive to November 2013, a back billing of two months.
- The monthly prices of two Water Plant 100M VPLS connections were corrected to $680 from $199.95 effective January 2014.
- The charges related to these services included back billings of $5,761 and a monthly increase of $4,110.10 thereafter.

With LUS Telecom, we noted the following March 2014 billing changes to wholesale services:

- In this period, 18 locations were upgraded from 10 Mbps SPR to 100 Mbps SPR for an increase in monthly charges of $1,453.
- The charge for dark fiber[62] increased from $28,752 to $44,087, resulting in an additional monthly charge of $15,335.
- The number of wireless radios receiving 10 Mbps SPR for $337 per month each, increased from 24 to 35. Though the service order indicated "Cost shared between LUS users and LUS Fiber users," LUS bore 89% of the charges, which were based on month-to-month pricing despite the 60 month term listed. These changes resulted in an increase of $3,706 in monthly charges.
- The changes to LUS Telecom's services resulted in a total monthly increase of $20,494.

The service upgrades and additions resulted in an increase in <u>new</u> monthly recurring revenue for LUS-Fiber of $102,603. Coupled with the back billing, these changes would increase LUS-Fiber's FY 2014 revenues by $1,381,082, as reported in Table 3 below.

[62] Analysis of Dark Fiber billings is the subject of a subsequent section of this report.

Table 3

Division	Description	Back Billings	FY 2014 Increase in Billings (1)
Wastewater (770)	Upgrade to 30Mbps VPLS	$ 151,341	$ 434,296
Electric Operations	Cap Banks	59,202	472,902
LUS AMI Gatekeeper	AMI Gatekeepers	95,200	154,532
LUS Network Engineering	Fiber Lease & 1 Gbps Internet	74,220	98,220
Water Operations	Water Wells/Water Plants	5,761	46,862
LUS Telecom	Shared Packet 100Mbps Upgrade	-	14,530
LUS Telecom	Dark Fiber	-	122,680
LUS Telecom	Wireless radios	-	37,060
TOTAL		**$ 385,724**	**$ 1,381,082**

(1) The amounts included in this column include back billings and the charges related to the service upgrades and additions made in January 2014 and March 2014 (Dark Fiber Only), and does not take into consideration other charges added or incurred for the year.

Subsequent to the service upgrades and additions, in response to the negative publicity generated by the Titch Report, Huval was compelled to provide a response. The email conversation illustrated below relates to an email chain between Jim Baller, Attorney at Baller Herbst Law Group, and Huval on June 23 and 24, 2014. The conversation pertained to Huval's concern regarding the appearance of the new LUS-Fiber revenues and further demonstrated the arbitrary nature of increases in LUS-Fiber services to LUS.

Baller: *"….As to the mechanics of how you actually handled the imputed taxes, I never knew how you did that."*

Huval: *"…Concerning our use of the imputed tax payments as a new revenue source for LUS which are being used to buy more services from LUS Fiber, do you see any issues about us doing that?"*

Baller: *"Terry, is there any reason to link the additional revenues to LUS and LUS's increased purchases from LUS Fiber?"*

Huval: *"<u>I gave it to you straight up. You have any suggestions on how I might better characterize this</u>* [emphasis added]*?"*

Baller: *"I'd suggest treating these as separate matters. The rules require imputed taxes. LUS Fiber is paying them. LUS needs more sevices* [SIC] *from LUS Fiber. It's buying them. End of story. This has nothing to do with cross-subsidization.*

Just curious about one thing. What was the rationale for paying the imputed taxes to LUS rather than to the City?"

Huval: *"…The rationale of paying the imputed taxes to LUS instead of the city was <u>so we could have control of it. Had we sent it to the city, some council members may have grabbed it to use for some other purpose and we would not have been able to borrow it</u> - which we knew was essential* [emphasis added]*."*

Findings:

Documents and emails[63] clearly indicate the service upgrades and additions were not based on requests conducted in an arm's length fashion between independent departments. Nor did they appear to be driven by departmental needs at the time, i.e. there was no identified limitation that the service upgrades were addressing. Rather, it was understood by department managers and further reflected in emails, that the objective was to provide more revenue to fiber to cover the imputed tax payments to LUS. As in prior years, the impacts of the new services on the departmental budgets were reduced or removed outright by the series of budget amendments that Huval hastily pushed through.

The emails described above indicate an attempt by Huval to arbitrarily inflate LUS-Fiber's revenues in an amount equal to or greater than the pending imputed tax payments. The service upgrades and additions, described in tables 2 and 3 above, evidenced the implementation of the plan discussed in the emails between Huval and Dawson.

Further, the nature of the back billings was such that the service changes were made effective the beginning of the fiscal year, regardless of whether the service was available and turned on at that time.

Acting in his capacity as the director of LUS and LUS-Fiber, Huval authorized and directed the arbitrary and unnecessary service upgrades and additions, self-dealings that clearly benefited LUS-Fiber.

The LUS-Fiber service upgrades and additions resulted in $1,431,367 in increased costs to LUS, costs that were passed on to LUS ratepayers. Given the above, these transactions appear to represent cross-subsidies of LUS-Fiber by LUS, in violation of the FCA.

Hayride Article and Subsequent Refund

On March 7, 2018, the annual increases in LUS departments' telecommunication budgets and corresponding increases in LUS-Fiber's revenue was the subject of the Hayride Article.[64]

The article grabbed the attention of several legislators who expressed their concern to PSC Commissioner Eric Skrmetta. Commissioner Skrmetta in turn planned to single out LUS-Fiber for an audit at the March 21, 2018 meeting of the PSC. However, the decision to audit was deferred due to efforts by Huval and Robideaux on March 20, to engage the Lafayette delegation of representatives and senators to pressure the Commissioners to defer the audit.[65]

Huval sent an internal memo to Toups on April 6, 2018 in response to the article, and after what he described as "*a self-initiated investigation*." The memo stated that fiber was in place and ready to provide services requested by the Wastewater division at 101 lift stations, but acknowledged that charges may have been billed for services that could not be used by Wastewater and Electric, namely certain fiber services to the lift stations and Cap Banks. The memo and accompanying documentation[66] identified 63 of the 101 lift stations and 25 Cap Banks that were not able to use the services provided or were no longer in operation.

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[63] See emails previously discussed and other illustrative emails included in Appendix D-5.
[64] See Appendix E-1.
[65] See Appendix E-2.
[66] See Appendix E-3.

The total amount of the charges with interest, $1,752,195, was refunded back to the two departments on April 18, 2018.

LUS also sent a letter to the PSC on April 12, 2018 acknowledging, "*Certain fiber service that was requested from and installed by the Communications division at the request of affiliate divisions have not been fully utilized*." The letter also stated, "*The Communications division treated the affiliates as it would any other customer - - it provided the fiber installation and made the fiber service available as requested*."[67]

Findings:

Emails uncovered in our investigation and statements made by LUS staff indicate Huval was aware of the status of the lift stations and the ongoing costs incurred to configure the stations to be able to connect with LUS-Fiber. Huval directed the implementation of the services and the corresponding billing that gave rise to the Hayride Article and the subsequent refund. Therefore, both the internal memo and the PSC letter misrepresented the circumstances surrounding the "request for services," by implying that these services were the result of an arms-length business request.

CRI reviewed the documentation and spreadsheet used in calculating the refund, noting the following:

a. In contrast to the memo, as of Apr 9, 2018, an internal spreadsheet listing lift station status reported 36 monitored by SCADA, not 38, while of the remaining lift stations alleged to be "ready", 17 were connected (ONT status = "up"), and 46 were not ready (ONT status = "down").

b. Based upon emails and documents evidencing lift station status at different points in time, we determined the lift station reimbursement appeared to be understated by at least $40,000, excluding interest. If the unnecessary service upgrades from 10Mbps VPLS to 30Mbps VPLS were factored into the reimbursement calculation, the refund would be understated by approximately $435,000, excluding interest.

c. The annual interest rates utilized in the reimbursement calculation were equal to the <u>average</u> of monthly rates over a year as opposed to a <u>summation</u> of those 12 monthly rates. While CRI has no opinion on the validity of the interest rates selected and used by LUS, when the selected monthly interest rates are applied correctly, the resulting amount of interest for the reimbursement would be $279,416, as opposed to the interest calculated by LUS of $34,758. While there are several different approaches one can take when calculating interest, CRI's recalculation is non-compounding, a more conservative approach. Further, interest rates applied to affiliate loans are governed by the FCA and the Rules. The interest rates utilized by LUS-Fiber in its refund calculation do not appear to be in compliance.

LUS Marketing

On November 2014, LUS-Fiber began billing LUS Marketing for services provided during Festival International, one of the largest international festivals in the region. Beginning April 2014, LUS-Fiber teamed up with Festival International de Louisiane, the nonprofit that organizes the festival, to sponsor free Wi-Fi during the event. [68]

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[67] See Appendix E-4.
[68] See Appendix F-1&2.

Through the review of LUS-Fiber billing records and service orders, we noted the charges continued for the remainder of the fiscal year. The services, provided to seven locations, were Internet – 60Mbps and Primary Static IP Address, billed at monthly rates of $210 and $10, respectively. The same seven stations were back billed retroactive to April 2013, a back billing of 18 months resulting in a charge of $28,072 in November 2014.

Findings:

Based upon documents obtained by CRI, the internet services in question appear to be a promotional expense of LUS-Fiber in their sponsorship of Wi-Fi services to the festival. Therefore, it would be inappropriate to record this service as revenue to LUS-Fiber with the corresponding cost passed to LUS, and consequently, the LUS ratepayers.

As such, the charges billed to LUS Marketing, totaling $46,552, appear to be a cross subsidy of LUS-Fiber by LUS in violation of the FCA.

LUS AMI Gatekeepers

The AMI Gatekeepers were installed from 2012 to 2013 in conjunction with the smart meter initiative and required a fiber connection to transmit the wireless signals received from the 70 smart meters back to LUS. Records indicate billing began in February 2012.

We reviewed the billing records noting that the February 2012 bill contained two months of "Gate Keeper Services" charges for each of the 20 Gatekeepers at $595.24 each. However, the remaining 50 Gatekeepers, which were not yet installed, were billed to a service titled "Reservation of Capacity," which was coincidentally also priced at $595.24 per month. Nearly all of the 50 Gatekeepers were back billed for four months. The Reservation of Capacity service charges continued in March to May at $29,762, tapering down to $1,786 by November 2012 where it remained until Jan 2014.

In January 2014, in conjunction with the other service upgrades, the Gatekeepers were arbitrarily upgraded to 100Mbps VPLS with a price of $680 and back billed to November 2013. Yet, no credit was given for the existing November and December 2013 charges.

In March 2020, LUS-Fiber identified three sites that were never installed but had been billed since November 2011. The charges of $201,977 and interest of $1,447 were refunded to LUS the same month.[69]

Findings:

From February 2012 to December 2013, LUS paid $287,501 for the Reservation of Capacity service, with $252,977 charged in the first four months. This service is not provided to any other affiliate or non-affiliate and does not appear after December 2013. It is nonsensical that LUS would pay for a short-term reservation of internet capacity, especially given there was no shortage of capacity. Further, given that the service is not provided to any non-affiliates, the price would have to be based on the cost to LUS-Fiber to provide the service, which would likely be near zero.

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[69] See Appendix G-1.

The Reservation of Capacity service does not appear to represent a valid charge[70] and as such, it is likely a cross-subsidy of LUS-Fiber by LUS, in violation of the FCA and the Rules.

The back billings of 100Mbps VPLS service in January 2014 without a corresponding credit for the existing charges results in an overbilling by LUS-Fiber of $83,334. This amount should be credited to LUS.

The arbitrary upgrade to 100Mbps VPLS, if it was indeed so, equates to the purchase of unused or unneeded services from an affiliate and thus represents a cross-subsidy of LUS-Fiber by LUS, in violation of the FCA and the Rules.

Irrespective of the service upgrade, the services utilized by the Gatekeepers were intended to be in-use for the long-term. Therefore, the pricing should have incorporated a 5-year contract as would have occurred in an arm's length negotiation. Given the common directorship, the failure to seek lower prices under a long-term contract may represent another subsidy to LUS-Fiber in violation of the law.

Furthermore, the price of $680 is well above the price offered to the Police Department of $405 per month for the same service as further detailed in a subsequent section of this report.

Finally, while the charges for the three Gatekeeper sites were refunded, the fact that it took more than eight years to identify these three locations reflects poorly on the internal control mechanisms of both LUS and LUS-Fiber.

Inconsistent Pricing or Potential Overcharging of Services

LUS-Fiber services are widely used among the various LCG affiliated entities. The pricing for the services offered to these affiliates vary depending on several factors, and are subject to the Rules. The Rules, as defined earlier in the report, provides guidance over determining these prices. If the service is provided to non-affiliates, the amounts charged to affiliated entities is to be consistent with the "prevailing market price." In the event the service is not provided to non-affiliated outside parties, the full-cost accounting methodology must be used.

CRI reviewed the FY 2016-2018 LUS-Fiber billings and identified some inconsistencies in the amounts charged to the different affiliates for the same service. We investigated discrepancies for those service charges that exceeded our threshold, and outlined the details below by service, where applicable.[71]

100 Mbps VPLS

VPLS is a service that connects user locations using virtual private LAN service technology to create a point-to-point connection designed to carry real time and data applications over a single customer interface.

Table 4

Entity	Avg # of Locations	Monthly Charge	Contract Term (Months)
Lafayette Police Dept.	2	$ 405	60
LUS (SCADA)	3	820	MTM*
LCG Traffic Control	2	695	60
LUS AMI Gatekeeper	74	680	MTM*
LUS Wastewater	1	680	MTM*
LUS Water Operations	3	680	MTM*

*Month-to-month

Per review of the service orders and billing details, we noted the charges for the 100

[70] An explanation has not been provided by LUS-Fiber as of the date of this report.
[71] Using the total amount of charges by service for FY 2016-2018, we determined a threshold of $15,000.

Mbps VPLS were charged inconsistently among different affiliates. In particular, the details of the service provided for Lafayette Police Department and LCG Traffic Control appear identical; however, the price varies significantly. This also applies to LUS (SCADA) when compared to LUS AMI Gatekeeper, LUS Wastewater, and LUS Water Operations, which all have the same contract terms but are paying different amounts for the same service.

Data – MAN 1Gbps

This service provides a computer network that interconnects users with computer resources within a metropolitan area at speeds of 1Gbps.

Table 5

Entity	Avg # of Locations	Monthly Charge	Contract Term (Months)
LCPCG	4	$ 3,680	60
LUS Telecom Dept	2	3,680	60
LUS Telecom Dept	4	3,930	12

Although the difference in pricing appears to be insignificant, there were a number of locations being serviced, which makes the difference more significant.

Data – MAN 100Mbps

This service provides a computer network that interconnects users with computer resources within a metropolitan area at speeds of 100Mbps.

Table 6

Entity	Avg # of Locations	Monthly Charge	Contract Term (Months)
LCPCG	11	$ 895	60
LCPCG	1	850	60
LUS Telecom Dept	11	1,000	12

Although the difference in pricing appears to be insignificant between the different LCPCG locations, the number of locations being serviced makes the difference more significant.

Data – Shared Packet 100Mbps

This service groups data together that is then transmitted over a digital network into packets at speeds of 100Mbps.

Table 7

Entity	Avg # of Locations	Monthly Charge	Contract Term (Months)
Lafayette Parish Library	2	$ 304	36
LUS Telecom Dept	4	800	60
LUS Telecom Dept	2	680	60
LUS Telecom Dept	15	436	60

Despite providing the same service with the same contract length, different LUS Telecom locations were charged different amounts. Additionally, Lafayette Parish Library was charged less than any of the LUS Telecom locations despite a shorter contract length.

Hosted Voice Seat

Hosted Voice Seat is a private phone system within a business.

Table 8

Entity	Avg # of Locations	Monthly Charge	Contract Term (Months)
LUS (SCADA)	1	$ 44	60
LCG IS&T Hosted Voice	3	19	60
LCG IS&T Hosted Voice	23	30	60

While both LUS (SCADA) and LCG IS&T Hosted Voice had contracts of the same length and for what appeared to be the same service, they were charged different amounts during the same period.

Findings:

The price charged to Lafayette Police Department for 100Mbps VPLS agrees to the long-term contract price on the rate schedule[72] provided by LUS. Given the availability of multi-year contract terms, there does not appear to be a justification for charging the other affiliates listed in Table 4 month-to-month prices. Given that the services were likely intended to continue for the long-term, the pricing should have incorporated a multi-year contract as would have occurred in an arm's length negotiation. Given the common directorship, the failure to seek lower prices under a long-term contract may represent another subsidy to LUS-Fiber in violation of the law.

For several services offered to affiliates, there is no known market price available. To remain in compliance with FCA rules, when a comparable market price cannot be determined, the service has to be priced based on the full-cost accounting method. These services include but are not limited to 100Mbps VPLS, 30Mbps VPLS, 20Mbps VPLS, and 10Mbps VPLS. CRI requested copies of the cost allocation workpapers related to these covered services but none were provided.

Dark Fiber

In 2007, LUS-Fiber began billing LUS for a lease of 10 of the 96 (on average) fibers in the LUS-Fiber backbone, which LUS "lights" using its own equipment on either end of the fibers, instead of using services provided by LUS-Fiber to do so. LUS uses the dark fiber[73] to manage its electrical operations to ensure adequate communication among its facilities to respond instantaneously to problems to preserve the power supply to its customers and to protect its facilities from overload.

LUS-Fiber provides the same dark fiber service to the University of Louisiana at Lafayette ("ULL"), which is a non-affiliate of LUS-Fiber, under a 2001 20 year contract between LUS and ULL. The terms of the agreement included a reduction in the rate for electric services to the university, but also included the provision of six dark fiber strands to connect the main campus of the university with its research park. There was no monetary value placed on these dark strands. These six dark fiber strands were included in the value of the asset transfer of the overall fiber infrastructure from LUS to LUS-Fiber.

LUS-Fiber originally charged LUS $44.23 per fiber per mile per month for this service, for a total charge of $28,752 per month, effective in 2007. In 2014, LUS-Fiber increased the charge to LUS to $67.83 per fiber per mile per month, for a total charge of $44,087 per month.[74]

The monthly charge to ULL was $1,335 for six fibers for a distance of 12.2 miles, which equates to $18.24 per strand mile per month.

Given the nature of the ULL contract, it does not qualify as an indicator of market rates for FCA purposes since it was a sub-component of a much larger electrical contract and did not have a value assigned to it.

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[72] Obtained from a June 21, 2018 email from Fremin. See Appendix H-1.
[73] Dark fiber is fiber-optic infrastructure that is not yet "lit" or put into use by a service provider. A dark fiber lease requires the customer rather than the service provider to maintain and operate the equipment required to "light" the fiber and use it for Internet access and communications.
[74] See Appendix I-1 for the pricing schedules.

Therefore, since the dark fiber service was not provided to any other non-affiliated outside parties, it must be recorded under the full-cost accounting methodology.[75]

Table 9

FIBER REVENUE FY 2011-2018

2011	2012	2013	2014	2015	2016*	2017	2018
$ 345,024	$ 345,024	$ 345,024	$ 467,704	$ 529,044	$ 440,870	$ 529,044	$ 529,044

*Note: FY 2016 appears to be missing two months of billings.

Findings:

Based on our analysis of the documents and information related to the pricing of the 10 dark fiber strands, we noted the following:

The initial pricing of the dark fibers to LUS was not compliant with the FCA Rules.

The methodology used by LUS-Fiber to price the service to LUS in 2007 was not based on the full-cost accounting methodology. Instead, LUS-Fiber based its price on the estimated replacement cost, which it assumed to be 60% of the cost per mile of the original 96 strands, recovered over 10 years at 6%, notwithstanding that the life of the fiber was well beyond 25 years. LUS-Fiber then added seven percent of the replacement cost per year, or $8,253 per month, for operations and maintenance, which is not justified given that LUS-Fiber is only providing the bare, unlit fiber and LUS is responsible for the equipment and maintenance to light the fiber. On top of the monthly sum of these "costs," LUS-Fiber applied a 20% markup, which is clearly not allowed in the full-cost accounting methodology.

The 2014 re-price of the LUS dark fiber was not compliant with the FCA Rules.

The only change in the methodology LUS-Fiber used to re-price the dark fiber in 2014 to $44,087 per month was that LUS-Fiber assumed 92% of the original cost per mile instead of 60%. In other words, LUS-Fiber deemed the per-mile cost to replace 10 fibers was equal to 92% of the original cost to install 96 fibers.

The Dawson model would not have been compliant with the FCA Rules.

We also reviewed the embedded cost methodology originally proposed by Dawson (the "Dawson Model") and used by LUS-Fiber in the development of their own model. Given that the full-cost accounting methodology was required, we determined that this model would also not comply with the Rules, as it inappropriately added a depreciation and profit component to the costs and did not take into account the distance of the strands being leased.

While the Dawson Model and the replacement cost models used by LUS-Fiber may be valid as standard techniques for determining the high end of market price in a private market, since the service was not provided to non-affiliates, the Rules mandated the full-cost accounting methodology.

[75] If it is later determined that the UL contract represented the market rate, the pricing of the dark fiber to LUS should have been $11,855 per month instead of $28,752.

Other Observations:

Given that the lease of the dark fiber to LUS was for management of its electrical operations and was clearly intended to continue for the long-term, the pricing in 2007 should have incorporated a 15 or 20-year contract as would have occurred in an arm's length negotiation. Given the common directorship, the failure to seek lower prices under a long-term contract may represent another subsidy to LUS-Fiber in violation of the law.

The 2014 change in pricing originated at the same time as the other service upgrades described above and appears to be another means of increasing LUS-Fiber's revenue through a cross-subsidy from LUS. The March 2014 price change increased LUS-Fiber's revenue by $184,020 per year for a total of $858,760 through FY 2018.

Based on interviews with LUS engineering staff, the actual number of dark fibers used by LUS is four, thus the billing of the 10 fibers would reflect a gross overpayment and another violation of the FCA and the Rules.

The supporting documentation pertaining to the dark fiber price change were obtained and reviewed by KCSC[76] noting no issues. However, as noted under the POMS section above, it does not appear that KCSC understood the requirements of the Rules, in particular the rules requiring the full-cost accounting for non-tariff, affiliate-only services, and the rule describing how that accounting was to be performed. According to KCSC auditors, they believed if the service was offered in a market *anywhere* then deriving a market price was acceptable, notwithstanding that the service was not provided to non-affiliates.

Other Observations

Deleted Emails

It was alleged by a whistleblower that emails, and possibly other documents, regarding Huval's potentially improper charges to LUS were being deleted. Without a digital forensics analysis, CRI is unable to prove that such emails were deleted. However, we identified a significant number of emails in the provided Microsoft Outlook PST files that were not present in the email archive provided by LUS.

Undue Influence

During our review of Huval emails, we noted several instances of Huval's influence on the final work product of the LUS and LUS-Fiber consultants, the consulting engineers, and the auditors. Significant examples of Huval's undue influence include Huval heavily editing and revising the opinions of the "independent" consultant,[77] the content and tone of the NewGen Consulting Engineer's Comprehensive Annual Report[78], and softening findings in the attestation audits.

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[76] See Appendix I-4 for KCSC request email and response.
[77] Opinions that were later provided to and relied on by LCG as having come from an independent telecom expert.
[78] While the influence exercised by Huval appears to be significant and\or material in CRI's perspective, we have not sought the opinion of an expert engineering consultant.

Conclusion

Terry Huval was the Director of LUS for over twenty years until his retirement in July 2018. In this capacity, he was Director of both LUS and LUS LUS-Fiber; the positions were not split until he retired. Huval was therefore able both to require LUS LUS-Fiber to charge whatever rate he chose for services, and to require LUS to pay it. As noted in the findings represented in the sections above, as the Director of LUS and LUS-Fiber, Huval does not appear to have conducted himself with appropriate fiduciary care in carrying out his dual directorship role.

Huval misrepresented the benefits of the POMS service and appeared to have knowingly and improperly priced POMS on a study from LEDA that provided estimated consumer savings instead of basing the price on LUS-Fiber's cost to provide, which was minimal. Huval was aware of the FCA requirements and the Rules but chose to repeatedly price POMS on the estimated cost savings to consumers, artificially inflating LUS-Fiber's revenues. The POMS charges were not compliant with the Rules and may violate state law.

Huval's memos and statements made to justify POMS to internal and external parties knowingly contained misleading representations, which may have violated state law. Huval's actions inflated LUS-Fiber's revenue by $7,329,784 for the FY 2011-2018.

Documents and emails described above indicate the initial charges to LUS for lift stations and the service upgrades and additions were not driven by an identified business need but instead appeared to be driven by Huval's intention to artificially inflate LUS-Fiber's revenue and may represent a cross-subsidy of LUS-Fiber by LUS, a violation of state law. Taken by itself, it is noteworthy that the cost to LUS ratepayers to convert the lift stations in order to use LUS-Fiber was $2,076,621, net of the refund.

While no evidence was discovered linking Huval to the billing of LUS Marketing and the improper charges and overbilling of the AMI Gatekeepers, when coupled with the arbitrary service upgrades, the charges cost LUS $773,367 through FY 2018 and appear to be cross-subsidies of LUS-Fiber by LUS, a violation of state law.

The pricing of the Dark Fiber does not appear to be compliant with the Rules, as it was not based on the cost of LUS-Fiber to provide the service and may have encompassed only four fibers instead of ten. The arbitrary change in pricing inflated LUS-Fiber revenues and LUS costs by $858,760.

The pricing of most, if not all, of the services discussed above do not reflect long-term contracts as would have occurred in an arm's length negotiation. Service pricing was inconsistent at best, poorly documented, and lacked required pricing and\or cost allocation documentation, as required by the Rules. Given the common directorship, the failure to seek lower prices under long-term contracts may represent another subsidy to LUS-Fiber in violation of the law and was contrary to Huval's duty as a fiduciary of LUS.

The Water, Wastewater, Electric, and LUS-Fiber divisions all reported to Huval, and the approval of division budgets and on-going management and oversight of both LUS and LUS-Fiber was ultimately the responsibility of Huval during the scope of the investigation. Given this common directorship, there was an appearance of self-dealings that clearly benefited LUS-Fiber to the detriment of LUS, its ratepayers, and potentially other LCG affiliates.

In all of the instances of potential violations of the Rules and the FCA, Huval, acting in his capacity as the director of LUS and LUS-Fiber and thus a fiduciary of these public entities, dictated, authorized or was aware of the improper activity and may have violated a number of state laws. [79,80,81,82]

Restrictions

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Carr, Riggs & Ingram, L.L.C

Attachments: Appendices A-I

[79] La. R.S. 14:67 (A) provides that, "Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations."
[80] La. R.S. 14:133 (A) states, "Filing false public records is the filing or depositing for record in any public office or with any public official, or the maintaining as required by law, regulation or rule, with knowledge of its falsity, or any of the following: (1) Any forged document. (2) Any wrongfully altered document. (3) Any document containing a false statement or false representation of a material fact."
[81] La. R.S. 14:132 states, in part, "(A) First degree injuring public records is the intentional removal, mutilation, destruction, alteration, falsification, or concealment of any record, document, or other thing, filed or deposited, by authority of law, in any public office or with any public officer. (B) Second degree injuring public records is the intentional removal, mutilation, destruction, alteration, falsification, or concealment of any record, document, or other thing, defined as a public record pursuant to R.S. 44:1 et seq. and required to be preserved in any public office or by any person or public officer pursuant to R.S. 44:36..."
[82] La. R.S. 45:844.53 (2) "A local government may not cross-subsidize its covered services with tax dollars, income from other local government or utility services, ... or any other means."

APPENDICES