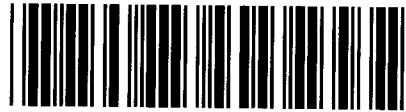




Control Number: 42866



Item Number: 18

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014.

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SOAH DOCKET NO. 582-14-3382
TCEQ DOCKET NO. 2014-0439-UCR

PETITION OF TRAVIS COUNTY §
MUNICIPAL UTILITY DISTRICT NO. §
12 APPEALING CHANGE OF §
WHOLESALE WATER RATES §
IMPLEMENTED BY WEST TRAVIS §
COUNTY PUBLIC UTILITY AGENCY; §
CITY OF BEE CAVE, TEXAS; AND §
WEST TRAVIS COUNTY MUNICIPAL §
UTILITY DISTRICT NO. 5 §

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**WEST TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 5'S
RESPONSE TO TRAVIS CO. MUD NO. 12'S
REQUEST FOR PRODUCTION AND REQUEST FOR ADMISSIONS**

TO: TRAVIS CO. MUD NO. 12, BY AND THROUGH ITS ATTORNEY OF RECORD,
KAY TROSTLE, SMITH TROSTLE & HUERTA LLP, 4401 WESTGATE BLVD.,
SUITE 330, AUSTIN, TEXAS 78745.

Respectfully submitted,

Randall B. Wilburn, Attorney-At-Law
3000 South IH 35, Suite 150
Austin, Texas 78704
Telephone: (512) 535-1661
Facsimile: (512) 535-1678

By: 

Randall B. Wilburn
State Bar No. 24033342

**ATTORNEYS FOR WEST TRAVIS COUNTY
MUNICIPAL UTILITY DISTRICT NO. 5**

18

CERTIFICATE OF SERVICE

This is to certify that the undersigned sent a true and correct copy of the foregoing Response to TC MUD 12's Request for Production and Request for Admissions in accordance with the applicable agency rules, as noted below, on this 13th day of August 2014 to the following parties:

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Randall B. Wilburn

PRELIMINARY STATEMENT AND OBJECTIONS

West Travis County Municipal Utility District No. 5 (the "District") objects to Travis County Municipal Utility District No. 12's ("MUD 12's ") definitions and instructions to the extent they seek to impose obligations with respect to discovery beyond those required by the applicable statutes and rules of court, and to the extent they attempt to ascribe to certain words or phrases meanings other than their customary and ordinary meanings.

These responses are made solely for the purpose of this action. Each response is made subject to all objections as to competence, materiality, relevance, or other objection as to admissibility that may apply in the event that any such response, or the information contained therein, is sought to be used in court. The District expressly reserves all such objections.

The District objects to each discovery request to the extent that it seeks information protected from disclosure by the attorney-client, work product, party communications, and consulting expert privileges and/or exemptions from discovery, including all subparts of Texas Rules of Evidence Rule 503(b). The District objects to each discovery request to the extent that it exceeds the requirements of the Texas Rules of Civil Procedure. Pursuant to Rule 192.3 of the Texas Rules of Civil Procedure, The District is obligated only to produce documents in its "possession, custody, or control." As such, the District objects to each and every Request for Production that seeks to impose obligations beyond those contemplated by Rule 192.

Pursuant to Rule 193.3(a) of the Texas Rules of Civil Procedure, the District may withhold privileged information and materials responsive to MUD 12's discovery requests. The District may assert the following privileges for the information and materials requested, if any, withheld from production: work product, attorney/client communication, and information made privileged by law. The District does not waive any claim of privilege by the inadvertent production of privileged materials.

The District has undertaken a good faith search for the information and documents requested by MUD 12. The District's responses thereto are made without prejudice to the District's right to change or supplement its responses, to produce additional documents, and to present additional evidence at the hearing. If necessary, the District will supplement its responses in accordance with Rule 193.5.

The District reserves the right to redact certain information that is not relevant, non-responsive, or privileged from documents that are otherwise responsive and non-privileged.

The District will produce documents in the form or manner in which the documents are kept in the usual course of business pursuant to Rule 196.3(c). The District will produce documents at the offices of its attorney of record, Randall B. Wilburn, 3000 South IH 35, Suite 150, Austin, Texas 78704 at a date and time mutually convenient to the parties.

RESPONSES TO REQUESTS FOR PRODUCTION

1-1: Provide a true and correct copy of the Interlocal Cooperation Agreement Regarding Creation and Operation of the West Travis County Public Utility Agency executed by WTCMUD 5. See Attachment B to the TCMUD 12 Petition, the Interlocal Agreement without a signature of WTCMUD 5.

OBJECTION: The District objects to this request as overly broad, unduly burdensome and not properly limited in time, scope or relation to the facts at issue in this proceeding. The District further objects to this request to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. *K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996). *See also* Tex. R. Civ. P. 192.3. The evidentiary hearing on public interest is limited to a determination of whether the protested lower rate adversely affects the public interest, nothing more.

RESPONSE: Subject to and without waiving the above objections, responsive and non-privileged documents will be produced.

1-2: Provide all documents in the possession or control of WTCMUD 5 related to the creation or operation of the PUA.

OBJECTION: The District objects to this request as overly broad, unduly burdensome and not properly limited in time, scope or relation to the facts at issue in this proceeding. The District further objects to this request to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. *K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996). *See also* Tex. R. Civ. P. 192.3. The evidentiary hearing on public interest is limited to a determination of whether the protested lower rate adversely affects the public interest, nothing more.

RESPONSE: Subject to and without waiving the above objections, responsive and non-privileged documents will be produced.

1-3: Produce all documents in the possession or control of WTCMUD 5 related to WTCMUD 5's participation in, or decision to participate in, the PUA.

OBJECTION: The District objects to this request as overly broad, unduly burdensome and not properly limited in time, scope or relation to the facts at issue in this proceeding. The District further objects to this request to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. *K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996). *See also* Tex. R. Civ. P. 192.3. The evidentiary hearing on public interest is limited to a determination of whether the protested lower rate adversely affects the public interest, nothing more.

RESPONSE: Subject to and without waiving the above objections, no items have been identified – after a diligent search – that are responsive to the request at this time beyond those produced in response to RFP Nos. 1-1 and 1-2.

1-4: Provide all documents in the possession or control of WTCMUD 5 that relate to the Actual Revenues collected on behalf of WTCMUD 5 for each Fiscal year, that is utilized to determine WTCMUD 5's proportionate share of the Annual Payments under the Acquisition, Water Supply, Wastewater Treatment and Conditional Purchase Agreement, including Exhibit A, thereto.

OBJECTION: The District objects to this request as overly broad, unduly burdensome and not properly limited in time, scope or relation to the facts at issue in this proceeding. The District further objects to this request to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. *K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996). *See also* Tex. R. Civ. P. 192.3. The evidentiary hearing on public interest is limited to a determination of whether the protested lower rate adversely affects the public interest, nothing more.

RESPONSE: Subject to and without waiving the above objections, responsive and non-privileged documents will be produced.

1-5: Provide all documents in the possession or control of WTCMUD 5 that relate to the determination of WTCMUD 5's proportionate share of the Annual Payments under the Acquisition Water Supply, Wastewater Treatment and Conditional Purchase Agreement, including Exhibit A thereto.

OBJECTION: The District objects to this request as overly broad, unduly burdensome and not properly limited in time, scope or relation to the facts at issue in this proceeding. The District further objects to this request to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. *K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996). *See also* Tex. R. Civ. P. 192.3. The evidentiary hearing on public interest is limited to a determination of whether the protested lower rate adversely affects the public interest, nothing more.

RESPONSE: Subject to and without waiving the above objections, no items have been identified – after a diligent search – that are responsive to the request at this time beyond those produced in response to RFP No. 1-4.

1-6: Provide all documents that identify WTCMUD 5's current customers, as referenced in the Acquisition Water Supply, Wastewater Treatment and Conditional Purchase Agreement.

OBJECTION: The District objects to this request as overly broad, unduly burdensome and not properly limited in time, scope or relation to the facts at issue in this proceeding. The District further objects to this request to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

K-Mart Corp. v. Sanderson, 937 S.W.2d 429, 431-32 (Tex. 1996). *See also* Tex. R. Civ. P. 192.3. The evidentiary hearing on public interest is limited to a determination of whether the protested lower rate adversely affects the public interest, nothing more.

RESPONSE: Subject to and without waiving the above objections, no items have been identified – after a diligent search – that are responsive to the request at this time beyond those produced in response to RFP No. 1-4.

1-7: Provide all documents that identify WTCMUD 5's Participant's System" as defined in Article 1 of the Acquisition Water Supply, Wastewater Treatment and Conditional Purchase Agreement.

OBJECTION: The District objects to this request as overly broad, unduly burdensome and not properly limited in time, scope or relation to the facts at issue in this proceeding. The District further objects to this request to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. K-Mart Corp. v. Sanderson, 937 S.W.2d 429, 431-32 (Tex. 1996). *See also* Tex. R. Civ. P. 192.3. The evidentiary hearing on public interest is limited to a determination of whether the protested lower rate adversely affects the public interest, nothing more.

RESPONSE: Subject to and without waiving the above objections, no items have been identified – after a diligent search – that are responsive to the request at this time beyond those produced in response to RFP No. 1-4.

1-8: Provide all documents that identify the WTCMUD 5's "service area", as that term is used in Article IV of the Acquisition Water Supply, Wastewater Treatment and Conditional Purchase Agreement.

OBJECTION: The District objects to this request as overly broad, unduly burdensome and not properly limited in time, scope or relation to the facts at issue in this proceeding. The District further objects to this request to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. K-Mart Corp. v. Sanderson, 937 S.W.2d 429, 431-32 (Tex. 1996). *See also* Tex. R. Civ. P. 192.3. The evidentiary hearing on public interest is limited to a determination of whether the protested lower rate adversely affects the public interest, nothing more.

RESPONSE: Subject to and without waiving the above objections, no items have been identified – after a diligent search – that are responsive to the request at this time beyond those produced in response to RFP No. 1-4.

RESPONSES TO REQUESTS FOR ADMISSIONS

1. Admit or deny that Attachment C to the TCMUD 12 Petition is a true and correct copy of the Acquisition Water Supply, Wastewater Treatment and Conditional Purchase Agreement entered into by the WTCMUD 5 as of March 19, 2012, signed by Larry Fox, President of Board of Directors and attested by Steve Leon, Secretary, Board of Directors.

RESPONSE: Admit.

2. Admit or deny that the fifth through eleventh pages of Attachment B to the TCMUD 12 Petition is a true and correct copy of the Interlocal Cooperation Agreement Regarding Creation and Operation of the West Travis County Public Utility Agency entered into by WTCMUD 5.

RESPONSE: Admit.

3. Admit or deny that WTCMUD 5 either on its own or in concert with or through the other Participants under the Acquisition Water Supply, Wastewater Treatment and Conditional Purchase Agreement, pursued legislative changes to the PUA Act for the purpose of enabling the PUA to serve end users directly, with the goal of creating a combined utility system owned and operated by the PUA and providing water supply and wastewater treatment services from the PUA directly to the current customers of each Participant.

RESPONSE: The District objects to this request as it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. K-Mart Corp. v. Sanderson, 937 S.W.2d 429, 431-32 (Tex. 1996). See also Tex. R. Civ. P. 192.3. The evidentiary hearing on public interest is limited to a determination of whether the protested lower rate adversely affects the public interest, nothing more.

4. Admit or deny that the Participants to the Acquisition Water Supply, Wastewater Treatment and Conditional Purchase Agreement did not succeed in obtaining legislative changes to the PUA Act enabling the PUA to serve end users directly, in order to create a combined utility system owned and operated by the PUA and providing water supply and wastewater treatment services from the PUA directly to the current customers of each Participant.

RESPONSE: The District objects to this request as it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. K-Mart Corp. v. Sanderson, 937 S.W.2d 429, 431-32 (Tex. 1996). See also Tex. R. Civ. P. 192.3. The evidentiary hearing on public interest is limited to a determination of whether the protested lower rate adversely affects the public interest, nothing more.

5. Admit or deny that the only "Participants" in the PUA are the City of Bee Cave, Hays County, and WTCMUD 5.

RESPONSE: Admit.

6. Admit or deny that TCMUD 12 is a water customer of WTCMUD 5.

RESPONSE: Respondent cannot admit or deny the request as stated, as the respondent does not know what the Requester means by the phrase "water customer of WTCMUD 5." If the Requester is asking whether Respondent has a wholesale water services agreement with Respondent, Requestor denies the request.

7. Admit or deny that the WTCMUD 5 has a firm water contract with LCRA.

RESPONSE: Deny.