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SOAH DOCKET NO. 473-14-5144
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PUBLIC UTILITY COMMISSION
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PETITION OF TRAVIS COUNTY	§	BEFORE THE STATE OFFICE
MUNICIPAL UTILITY DISTRICT NO.	§	
12 APPEALING CHANGE OF	§	
WHOLESALE WATER RATES	§	
IMPLEMENTED BY WEST	§	
TRAVIS COUNTY PUBLIC UTILITY	§	OF
AGENCY, CITY OF BEE CAVE, TEXAS	§	
HAYS COUNTY, TEXAS AND WEST	§	
TRAVIS COUNTY MUNICIPAL	§	
UTILITY DISTRICT NO. 5	§	ADMINISTRATIVE HEARINGS

TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12'S
MOTION TO COMPEL THE WEST TRAVIS COUNTY
PUBLIC UTILITY AGENCY RESPONSES TO TCMUD 12'S
FIRST REQUEST FOR PRODUCTION 1-13

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Travis County Municipal Utility District No. 12 ("TCMUD 12"), files this Motion to Compel the West Travis County Public Utility Agency ("WTCPUA") to respond to TCMUD 12's First Request for Production No. 1-13.

The WTCPUA filed an Index Of Privileged Documents responsive to TCMUD 12's First Request for Production No. 1-13 on Friday, September 26, 2014 pursuant to PUC PROC. R. 22.144(d)(2), but did not request an *in camera* inspection pursuant to PUC PROC. R. 22.144(g). In accordance with the agreement of the parties at the September 11, 2014 Prehearing, as noted by the ALJ in Order No. 6, TCMUD 12 reserved the right to challenge the application of those privileges to the documents identified in the privilege index.

TCMUD 12 hereby challenges the application of the privilege claimed by the WTCPUA as set forth in the Index of Privileged Documents. For each of the nine documents listed in the Index, the WTCPUA claims that the document in question is "a confidential work product communication made in anticipation of litigation." Under Texas law, the work-product privilege

depends on proof that the materials were prepared in anticipation of litigation.¹ Texas Courts have noted that “There should be some circumstances associated with the specific case to suggest a suit will be filed, or is at least being contemplated. Otherwise, the subjective speculative fears of the defendant, or the tactically motivated predictions of his attorney, will dictate the parameters of discovery.”² The documents subject to this request are workpapers (email exchanges) that were prepared by WTCPUA’s consultant (7) or by WTCPUA’s General Manager (2) between March 28, 2013 and May 30, 2013 -- prior to the time the WTCPUA Board made the decision to change the rates on November 21, 2013 and well before the contested case was filed.

No hearing is required on this motion. PUC PROC. R. 22.144(e) states that “The presiding officer may rule on the motion to compel based on written pleadings without allowing additional argument.” Should the ALJ grant this Motion to Compel and overrule the WTCPUA’s objections, TCMUD 12 requests that the ALJ set a date certain for the responsive documents to be produced. In light of TCMUD’s 12 deadline to file its direct case on October 31, 2014, TCMUD 12 requests that the deadline be 10 days from the date of the ALJ’s order granting this motion.

For the reasons stated above, TCMUD 12 respectfully requests that this Motion to Compel be granted and it be granted any further relief to which it has shown it is entitled.

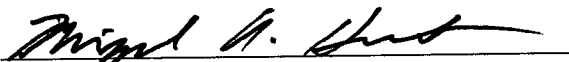
¹ *National Tank Co. v. Brotherton*, 851 S.W. 2d, 193, 202 (Tex. 1993).

² *Boring & Tunneling Co. of America, Inc. v. Salazar*, 782 S.W.2d 284 (Tex.App. —Houston [1 Dist.] 1989), orig. proceeding); quoting *Phelps Dodge Refining Corp. v. Marsh*, 733 S.W.2d 359, 360-61 (Tex.App.—El Paso 1987, orig. proceeding).

Respectfully Submitted,

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ATTORNEYS FOR TRAVIS COUNTY
MUNICIPAL UTILITY DISTRICT NO. 12

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been sent to the parties in this case by facsimile on this 3rd day of October, 2014.


Miguel A. Huerta