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SOAH DOCKET NO. 473-14-5144
PUC DOCKET NO. 42866

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FILED

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
FOURTH REQUESTS FOR INFORMATION

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 Fourth Request for Information. Pursuant to SOAH Order No. 4 and PUC PROC. R. 22.144, this Motion is timely filed.

I. BACKGROUND

TCMUD 12 propounded its Fourth Requests for Information on WTCPUA on October 7, 2014 and WTCPUA filed its Objections on Friday, October 17, 2014. This Motion to Compel is timely filed on Friday, October 24, 2014, five working days after the receipt of the Objections.

II. MOTION TO COMPEL

A. TCMUD 12 RFI 4-4(d)

4-4 Please refer to the WTCPUA's response to TCMUD 12 INTERROGATORY 1-1, in which the WTCPUA includes as a changed condition that "the PUA also agreed to amend the wholesale water treatment service agreements with some of its other wholesale water customers, redefining the amount of water treatment services needed and or amending the build-out schedule for such wholesale customers."

For each of the wholesale water treatment service agreements that the PUA agreed to amend, please provide the following:

- (d) Please produce all Documents and Communications related to these amendments.

WTCPUA's Objections. The WTCPUA has objected to these RFPs on the grounds of relevance and duplication, and stated that certain information was being withheld under the Attorney-Client Privilege and Work Product Privilege.

TCMUD 12's Response to Relevance Objection. This RFI question seeks documents between the WTCPUA and its wholesale customers concerning amendments to the wholesale customers' water services agreements. The relevancy of these documents is contained in WTCPUA's earlier discovery request. TCMUD 12 asked WTCPUA to "describe in detail any changed conditions that PUA claims formed the basis for your decision to change the wholesale water rates you charge TCMUD #12." In the WTCPUA's response, the WTCPUA listed as a changed condition the fact that "the PUA also agreed to amend the wholesale water treatment service agreements with some of its other wholesale water customers, redefining the amount of water treatment services needed and or amending the build-out schedule for such wholesale customers." Thus, the WTCPUA itself raised the issue of the amended water services agreements as relevant to this proceeding as a changed condition supporting the change of rates. TCMUD 12 should be able to conduct discovery based on the answers of WTCPUA to previous discovery questions. The fact that WTCPUA has identified these amendment agreements as relevant to the changed conditions criteria should suffice to establish its relevance to this proceeding.

In addition, the public interest inquiry explicitly states that the disparate bargaining power of the parties is one of the factors to be considered in determining whether there has been an abuse of monopoly power by the seller. The negotiations and communications between the WTCPUA and its wholesale customers seeking to amend their water services agreements will reveal the bargaining power of the WTCPUA vis-a-vis its wholesale customers and is therefore reasonably calculated to lead to the discovery of admissible evidence on this issue.

Furthermore, one of the public interest criteria is whether the protested rate is unreasonably preferential, prejudicial, or discriminatory, compared to the wholesale rates the seller charges other wholesale customers. While WTCPUA has produced the water services agreement amendments, the negotiations between the WTCPUA and its wholesale customers that led to those amendments may reasonably lead to the discovery of admissible evidence on this issue.

For each of these reasons, the request is relevant to this public interest proceeding and the WTCPUA's objection should be overruled.

TCMUD 12's Response to Duplicative Objection. The WTCPUA argues that this request is duplicative of RFP 1-13. This request seeks documents and communications between the WTCPUA and its wholesale water services customers specifically related to the negotiation and interplay between the WTCPUA and its wholesale water services customers seeking amendments to their water services agreements. RFP 1-13 on the other hand, requests that the WTCPUA "Provide all documents related to presentations made to the PUA's wholesale water customers related to water rate increases." While there may be some overlap between the requests, the two requests are not identical or duplicative. To the extent that there is any overlap, TCMUD 12's requests to WTCPUA clearly state that WTCPUA is not obligated to produce the material a second time, but rather, may simply identify the material:

These RFIs are intended to not be duplicative of other discovery propounded by any other party, therefore to the extent any information requested herein is found in responses to other discovery, the PUA should so state rather than producing additional responses. If any information sought herein has already

been filed in the Docket then reference to the location of that information is a sufficient response.¹

Because the two requests seek different information, and in the event there is any duplication the WTCPUA is not obligated to duplicate earlier response, WTCPUA's duplicative objection should be overruled.

TCMUD 12's Response to the Privilege Claim. This request relates to the negotiation of water service agreement amendments that are the result of arms-length negotiations between two unrelated parties – the WTCPUA as the seller and the wholesale customers as a buyer. As such, many of the documents and communications between the seller and buyer would not be protected by privilege. To the extent that privileged information exists, TCMUD 12 is not seeking that privileged information. If the relevance objection above is overruled, however, TCMUD 12 requests that the ALJ order WTCPUA to produce a privilege log pursuant to PUC Proc. R. 22.144(d)(2).

III. CONCLUSION AND PRAYER


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 any part of this Motion to Compel TCMUD 12 requests that the ALJ set a date certain for the responsive documents or the privilege log to be produced. 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 TCMUD 12' Fourth Request for Information to the WTCPUA, pg. 1.

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 24th day of October, 2014.


Miguel A. Huerta