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SOAH DOCKET NO. 473-14-5138.WS
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PETITION OF NORTH AUSTIN § BEFORE THE STATE OFFICE
UTILITY DISTRICT NO. 1, §
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DISTRICT, TRAVIS COUNTY WATER §
CONTROL AND IMPROVEMENT §
DISTRICT NO. 10 AND WELLS § OF
BRANCH MUNICIPAL UTILITY §
DISTRICT, FROM THE RATEMAKING §
ACTIONS OF THE CITY OF AUSTIN §
AND REQUEST FOR INTERIM RATES §
IN WILLIAMSON AND TRAVIS §
COUNTIES § ADMINISTRATIVE HEARINGS

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PETITION OF NORTH AUSTIN § BEFORE THE STATE OFFICE
MUNICIPAL UTILITY DISTRICT NO. §
1, NORTHTOWN MUNICIPAL §
UTILITY DISTRICT, AND WELLS §
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CITY OF AUSTIN'S RESPONSE TO PETITIONERS' OBJECTIONS TO, MOTION TO
EXCLUDE AND MOTION TO STRIKE THE PREFILED TESTIMONY AND
EXHIBITS OF GREG MESZAROS, BART JENNINGS, DREMA GROSS, TERESA
LUTES, MICHAEL P. CASTILLO, DAVID A. ANDERS, JOE HEALY, AND RICHARD
D. GIARDINA

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW, the City of Austin, (herein sometimes referred to as "City," "Austin",
"Austin Water Utility" or "Respondent"), in the above styled and docketed wholesale water and
wastewater rate appeal proceeding and serves this, its Response to Petitioners' Objections to,
Motion to Exclude and Motion to Strike Prefiled Testimony and Exhibits of Greg Meszaros, Bart

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Jennings, Drema Gross, Teresa Lutes, Michael P. Castillo, David A. Anders, Joe Healy, and Richard D. Giardina.

I. INTRODUCTION

1. The City of Austin was made party to this water rate petition in accordance with Order No. 1 Granting Motion to Continue Preliminary Hearing (“Order No. 1”) on June 17, 2013.
2. On July 14, 2014, Austin witnesses Greg Meszaros, Bart Jennings, Drema Gross, Teresa Lutes, Michael P. Castillo, David A. Anders, Joe Healy, and Richard D. Giardina filed their Prefiled Testimony and Exhibits with the State Office of Administrative Hearings (“SOAH”) and the Public Utilities Commission (“PUC, or “Commission”). Each of the named parties in Order No. 1 were served a copy of the prefiled testimonies via electronic mail and regular United States mail.
3. On December 22, 2014, Petitioners filed their Objections, Motions to Exclude and Motions to Strike Prefiled Testimony and Exhibits of Greg Meszaros, Bart Jennings, Drema Gross, Teresa Lutes, Michael P. Castillo, David A. Anders, Joe Healy, and Richard D. Giardina.

II. GENERAL RESPONSE TO PETITIONERS’ OBJECTIONS

Petitioners’ have filed generalized, repetitive and all-inclusive objections to Austin’s pre-filed testimony in a transparent effort to induce the ALJs to produce an inadequate evidentiary record to present to the Public Utility Commission for its ultimate review and determination. Throughout their objections, Petitioners repeat self-serving and meritless themes of what is “relevant and material” in this case; what constitutes adequate evidentiary foundation for testimony and exhibits; what constitutes factual testimony as opposed to expert testimony; and what authentication of exhibits is necessary when a written exhibit is identified and sponsored by a qualified and competent *fact* witness. Petitioners’ tact in making such objections is

understandable from their view: if the Commission is presented with an inadequate and incomplete record, Petitioners stand a better chance of prevailing on all issues. However, it is not in the interests of *all* parties, including PUC staff and the Commission to consider a record that does not consider *all* of the active issues under consideration in these consolidated contested rate case hearing dockets.

III. REVELANCE AND MATERIALITY

A. Active Issues Regarding “Public Interest”

Petitioners and Austin have very different understandings of the relevant issues in these cases. Austin’s prefiled testimony was written to address *all* issues that were raised directly and indirectly by Petitioners in their *First Amended Petition Appealing Rates of the City of Austin and Request for Interim Rates*, and the Original Petition Appealing Wastewater Rates of the City of Austin which are still the active pleadings in these cases. Petitioners may have forgotten, but they filed these rate cases pursuant to Sections 13.044 of the Water Code *and* Sections 11.036-11.041 and 12.013 of the Water Code. To review, those sections pertain the following:

Texas Water Code, Chapter 13:

§13.044 and §13.044(b)¹: *Rates Charged By Municipality to District;*

Texas Water Code, Chapter 11:

TWC, §11.063²: *Conserved or Stored Water: Supply Contract;*
TWC, §11.037: *Water Suppliers: Rules and Regulations;*
TWC, §11.038: *Rights of Owners of Land Adjoining Canal, etc;*
TWC, §11.039: *Distribution of Water during Shortage;*
TWC, §11.040: *Permanent Water Right; and*
TWC, §11.047: *Denial of Water: Complaint.*

Texas Water Code, Chapter 12:

TWC, §12.013³: *Rate-Fixing Power (of the TCEQ).*

¹ Petition, Page 3 of 13

² Petition, Page 4 of 13, specifically raised “Sections 11.036-11.041 of the Water Code,” especially §§11.036 and 11.041

³ Petition , Page 4-5 of 13

Early on these cases, Austin asserted to the ALJ that Petitioners' bases for their appeals were contradictory and confusing. For example, Petitioners clearly sought *and ultimately received* interim rates in this case. However, interim rates are *only* available under Tex. Water Code, §12.013. Accordingly, Austin requested consideration of the Public Interest determination via a bifurcated hearing, where the specific matters set forth in TCEQ Rules at 30 Tex. Admin. Code §291.133, Determination of Public Interest, are considered first; *before* matters related to Petitioners' allegations regarding the cost of service are heard.

The TCEQ has rules⁴ regarding the Determination of Public Interest (§24.133 and an Evidentiary Hearing on Public Interest (§24.132). Section 24.132 mandates that an evidentiary hearing record be developed that addresses the breadth of issues that are, relevant to determination of "public interests". These relevant factors, by rule, [§24.133(b)] are *unrelated* to Austin's cost of service, Section 24.133 provides, in pertinent part:

§24.133. Determination of Public Interest.

- (a) The commission shall determine the protested rate adversely affects the public interest if after the evidentiary hearing on public interest the commission concluded at least one of the following public interest criteria have been violated:
 - (1) the protested rate impairs the seller's ability to continue to provide service, *based on the seller's financial integrity and operational capability*;
 - (2) the protested rate impairs the purchaser's ability to continue to provide service to its retail customers, *based on the purchaser's financial integrity and operational capability*;
 - (3) the protested rate evidences the seller's *abuse of monopoly power* in its provision of water or sewer service to the purchaser. In making this inquiry, the commission shall weigh all relevant factors. The factors may include:
 - (A) the *disparate bargaining power of the parties*, including the purchaser's alternative means, alternative costs, environmental impact, regulatory issues, and problems of obtaining alternative water or sewer service;
 - (B) the seller's failure to reasonably demonstrate the changed conditions that are the basis for a change in rates;
 - (C) the seller changed the computation of the revenue requirement or rate for one methodology to another;

⁴ The reference is to TCEQ rules which were applicable at the time of filing and ALJ consideration of the orders. P.U.C. Proc. R. §24.132 adopted the same provisions as TCEQ Rules at 30 Tex. Admin. Code, §24.132.

- (D) where the *seller demand the protested rate pursuant to a contract, other valuable consideration received by a party incident to the contract;*
 - (E) *incentives necessary to encourage regional projects or water conservation measures;*
 - (F) the seller's obligation to meet federal and state wastewater discharge and drinking water standards;
 - (G) *the rates in Texas by other sellers of water or sewer service for resale;*
 - (H) the seller's rates for water or sewer service charged to its retail customers, compared to the retail rates the purchaser charged its retail customers as a result of the wholesale rate the seller demands for the purchaser;
- (4) the protested rate is *unreasonably* preferential, prejudicial, or discriminatory, compared to the wholesale rates the seller charges other wholesale customers.

§24.133(a)
(emphasis supplied)

In requesting a bifurcated hearing, Austin sought to develop an evidentiary record under §24.132 that reflected Austin's past contractual relationship with the Petitioners; its open and inclusive rate making process that included the Petitioners over the years instead of an abusive monopolistic process that denied reasonable input by Petitioners and their representatives; and the transparent development of Austin's cost of service *methodology* that is designed, with Petitioners' knowledge and participation, to produce just and reasonable wholesale water and wastewater rates.

The ALJ's Order No.3 denied Austin's request for a bifurcated hearing. The ALJ further reduced the scope of the issues in the hearing consistent with her ruling in Order No. 3. For example, the Order states that the hearing on the merits shall be a cost of service evidentiary hearing under §13.044(b). However, even though there was not an agreement between Austin and the Petitioners that the evidentiary hearing on public interest and the evidentiary hearing on cost of service be *consolidated*, as is allowed under §24.132(d); Austin contends that it is allowed, even obligated, to ensure that its position that public interest issues be included in the Commission's consideration of this appeal. This is particularly true since interim rates *were awarded* in Order No. 9, even though there is no provision for interim rates under §13.044(b) of the Texas Water Code. Consequently, Austin's prefiled testimony reflects the fact that Judge

Shenoy's Order No. 3 is an *interlocutory ruling* that must be carried throughout the hearing. The testimony included in Austin's Prefiled Testimony that exceeds issues raised by §13.044(b) of the Texas Water Code (but not Petitioners' First Amended Petition) is therefore subject to PUC rules 16 TAC §§22.221(d) and 22.227.

Under TCEQ Rule §291.136, the burden of proof is on *the Petitioners* to show that Austin's protested rate is adverse to the public interest. That same rule maintains the burden proof on Austin regarding the determination of cost of service. Therefore, the question in this consolidated hearing of public interest issues and cost of service issues is not simply whether Austin's prefiled testimony contains evidentiary proffers outside of Petitioners' narrow view of what is relevant; but also whether Petitioners' prefiled testimony adequately satisfies Petitioners' burden of proof under §291.136.

In short, on this issue alone, Petitioners' objections to any testimony that is not relevant to their opinion of "Cost of Service" issues are inherently without merit and reflective of *their* short memories of all the salient issues that are still contested in these cases.

Please note: Since the ALJs took jurisdiction of this consolidated contested rate case, jurisdiction has transferred from the TCEQ to the PUC. However, the statutory bases, common law and regulatory bases review the same. The PUC adopted the TCEQ Rules in PUC Subst. R. Chap. 24.

B. Active Issue Regarding Contractual Relationship Between Austin and Petitioners

At paragraphs 3.6, 3.7, 3.8, 3.9, 3.15 and 3.18 of their First Amended Original Petition, Petitioners raised the issue of the relationship between Austin and the Petitioners being governed by existing contracts. Petitioners included copies of *some* of the applicable contracts between Austin and Petitioners as exhibits to their Petition. Notably, Petitioners included the applicable Water and Wastewater Settlement Agreements, which provided for participatory development of a cost of service, and notice and comment by Petitioners which continues to this day. Petitioners have expressly raised the issue of whether the rates that are the subject of these appeals are specified by contract or otherwise set by Austin's City Council.

Austin is entitled to present to the Commission a response to those active allegations that utilizes *all* of the issues envisioned by the Commission in an appeal by municipal utility districts. While Petitioners erroneously assert that §294.45(c) obligated Austin to seek approval from the

TCEQ; Austin has already made the ALJ aware of the TCEQ's comments when it adopted 30 Tex. Admin. Code §§291-128-291.138 in 1994. Those comments will be repeated here:

The commission concludes the public interest does not demand that a wholesale rate shall equal the seller's cost of providing service to the purchaser. *The commission believes this is an appropriate conclusion which is consistent with the statutory requirements of the Water Code, Chapters 11, 12, and 13.* This is appropriate even though the Code requires the commission to ensure that rates are "just and reasonable," "not unreasonably preferential, prejudicial or discriminatory," and that they shall be "sufficient, equitable, and consistent in application to each class of customers." While these terms are traditionally used to invoke a regulatory authority's duty to set rates that are based upon cost of service, the circumstances which justify cost of service ratemaking are not present here. As is explained in the Water Code, the Legislature imposed a comprehensive regulatory system upon retail water and sewer utilities which are by definition monopolies in the areas they serve, and that the regulatory system is intended to serve as a substitute for competition. This system calls for rates based on the seller's cost of providing service. The circumstances of wholesale water and sewer service are not the same. The disputes concerning wholesale rates which have come before the commission concern parties who are in a position quite different than the typical retail customer. The purchaser is itself a utility that is sophisticated in utility transactions, and the purchaser, generally, has had several options from which it may obtain water or sewer service, including self service.

19 Tex. Reg. 6228 (1994) (codified at 30 Tex. Admin. Code, §291.129 - §291.138 (Texas Natural Resource Conservation Commission))

This is why Austin's pre-filed testimony includes more than the simple dollars and cents of Petitioners cost of service issues. The "comprehensive regulatory system" relevant to *retail* water and wastewater service does not define the extent of Austin's relationship with Petitioners, since 1994. Petitioners may wish to pretend otherwise, but Austin is obligated to present the *entire* rate-making history of Austin's contractual relationship with Petitioners, so that the evidentiary record is complete.

C. Austin's Presentation of Cost of Service Issues Not Constrained by TCEQ (PUC) Format.

Petitioners asserted that Austin was obligated to seek approval from the TCEQ before it established whole water and wastewater rates applicable to them. Austin has stated that it does

not agree with Petitioners' position in that regard. The TCEQ and/or the PUC has not prescribed wholesale rates applicable to Petitioners and certainly did not do so in 1989. Therefore, 30 Tex. Admin. Code §291.45(c) does not apply. It states:

(c) After the commission establishes just and reasonable rates, the municipality may not increase those rates without approval of the commission. A municipality desiring to increase rates must provide the commission with *updated information in a format specified in the current rate data package developed by the rates section.*

§291.45(c)
(emphasis supplied)

The City of Austin developed a comprehensive and complex system of determining and implementing its cost of service for water and wastewater rates through a public process. It did so with the full knowledge and participation of representatives of the Petitioners. Petitioners actively participated *because* they are "sophisticated in utility transactions," as described by the TCEQ. Therefore, Austin's direct case, that is reflected by its rate filing package, exhibits, and direct testimony, need not conform to a "format specified...by the rates section," which certainly, in any case, has not been forthcoming from either the TCEQ or PUC staff. In fact, counsel for Austin consulted with TCEQ counsel regarding an appropriate Rate Filing Package, and TCEQ counsel Ron Olson specifically left the contents up to Austin, stating that the packages outlined for Investor Owned Utilities were not applicable. (*See affidavit of Gwendolyn Hill Webb attached as Exhibit 1*) Therefore, Austin is entitled to present to the Commission its cost of service and all of the material circumstances surrounding the creation of its cost of service in a format that is accurate and reflective of its recent historical contractual relationship with these Petitioners.

When Petitioners object to certain exhibits as being inadmissible because they reflect budgeted amounts of costs instead of "actual costs" they are really making objections that, at best, go to the weight rather than admissibility of the evidence. Moreover, because of the size and complexity of Austin's cost of service model, Austin's exhibits that do contain actual costs and expenses that are sponsored by Austin's witnesses, including Greg Meszaros and David Anders, are subject to 16 TAC §22.221(a). There has not been a demonstration or codification of a TCEQ standard or rule that would exclude any particular *form* of evidence to be presented by

Austin in these contested cases. Neither the PUC Staff nor Petitioners have cited any particular rule to that effect, in their objections.

IV. FACTUAL AND EXPERT TESTIMONY

Petitioners make blanket objections about the statements of Austin's witnesses as being "disguised" expert opinion testimony in order to make gratuitous objections to a "failure" of Austin to designate its witnesses as "experts". Austin has designated the witnesses as experts under TRE 702 that Austin considers to be appropriate and from whom Austin offers expert testimony. Austin does not agree that the non-expert fact testimony of Greg Meszaros, David Anders, Michael Castillo, Bart Jennings, Teresa Lutes, and Drema Gross must be qualified as "expert testimony" under *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995), nor is said testimony inappropriate fact testimony. The nature of the testimony offered by Austin's sponsored non-expert testimony is of a kind appropriate from the experienced, professional managers of Austin Water Utility about a specialized and complex subject matter: the operation of Austin Water Utility and the relationship of Austin Water Utility's operations to the development of wholesale water and wastewater rates.

Petitioners' objections to Austin's non-expert testimony are generally without merit and contrary to applicable rules of evidence. Under TRE 701, a fact witness is allowed to offer opinion testimony. The rule states:

"If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally bases on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue."

TRE 701

There are few Texas cases that have construed TRE 701. One such case is the unreported opinion of the Seventh Court of Appeals in *Ammons v. State*, 07-02-0123-CR (Tex. App- Amarillo 2003). In that case, a non-expert school teacher is deemed qualified to offer probative non-expert testimony in a criminal trial court case about the likelihood that a child had suffered sexual molestation, based on her classroom observations of the child's demeanor. The court assessed the school teacher's past experience and limited exposure to the child in question as competent to render a limited opinion on the factual likelihood that the child had been molested.

Austin does not offer its non-expert testimony for such a sensitive purpose. Austin's non-experts are only testifying about whom they are, their jobs, and how they do their jobs at Austin Water Utility. Those jobs consist of the operation of Austin Water Utility; Austin's contracts with Petitioners and other wholesale customers; and the reasons why Austin makes certain choices in the setting of "just and reasonable water and wastewater rates." Most of their testimony is strictly factual and non-opinion testimony and is certainly within their personal knowledge as managers of Austin Water Utility. To the extent that opinions are expressed, they are limited to those rationally derived from doing their jobs and are designed to help the Commission understand how Austin sets wholesale water and wastewater rates. Where the testimony expresses an opinion on technical information, it is offered to demonstrate the manager's understanding of the technical information and how that understanding has informed his actions as managers. Austin chose to sponsor Austin Water Utility managers because it was more efficient than sponsoring the thousands of employees and officials of the City of Austin. The employment backgrounds, experiences and relevant descriptions of each manager who sponsors, testimony has been included to lay a factual predicate for the rationality of each witness' perception of the relevant facts surrounding the operations of Austin Water Utility and the development of just and reasonable water and wastewater rates.

Petitioners' reliance upon *Reid Road MUD v. Speedy Stop Food Stores*, 337 S.W.3d 846 (Tex. 2011) is misplaced. That case included a person, ("Mr. LaBeff") who attempted to offer a trial court an affidavit regarding the market value of a particular piece of real property based upon his "knowledge, background, education, and experience" (*Speedy Stop* at p. 852), under TRE Rule 701. That witness had not been designated as an expert under TRE Rule 702. The key distinguishing factor about the disallowed LaBeff affidavit testimony and Austin's testimony was the court's observation that the witness affidavit did not specify that the witness was familiar with the property, nor did he state that he was familiar with its value. Moreover, the court acknowledged that "generally, a property owner is qualified to testimony to the value of her property even if she is not an expert and would not be qualified to testify to the value of other property." [Citing *Porras v. Craig*, 675 S.W.2d 503, 504 (Tex. 1984)] (*Speedy Stop* at p. 853)

This is the difference between Mr. LaBeff's affidavit and that of the non-expert testimony of Austin's witnesses. In this case, Austin's witnesses are testifying about *AWU's* policies and practices- not any other water utility or "all other water utilities." Their understanding of general

information such as, for example, bond ratings or drought contingencies, is included to explain AWU's rate making policies and practices, not a statement of what *should be* the policies and practices of other utilities. These explanations of AWU's policies and practices are appropriate non-expert testimony under Rule 701.

Petitioners' objections to the testimony of Austin's non-experts should be disregarded as a transparent attempt to obfuscate Austin's presentation of its rate-making process and methodologies.

IV. AUTHENTICATION OF EXHIBITS

Petitioners have made similar, meritless objections about exhibits sponsored by Austin's fact witnesses. Petitioners' statements that factual exhibits generated by qualified witnesses to testify about such exhibit's content, is also meant to needlessly obfuscate the facts contained in Austin's presentation. Under TRE 901 (a) and (b) (1), Austin has sponsored witnesses with knowledge to testify that the exhibits—that they have either generated or routinely handled in the discharge of their duties—are what they appear to be. There is certainly no reason for Austin's witnesses to sponsor only self-authenticating documents under TRE 902 "under seal" as Petitioners suggest. The admissibility of Austin's witnesses exhibits have been generally supported by the sponsoring testimony of Austin's witnesses. Moreover, during the hearing, the witnesses can address any authentication issued under oath. [See *Baker v. City of Robinson*, 305 S.W.3d 783, 792 (Tex. App- Waco 2009, pet. Denied and *Durkay v. Madco Oil Co.*, 862 S.W.2d 14 24 (Tex. App.-Corpus Christi 1993, writ denied)]. Such testimony more than satisfies the case-law holding that the predicate for admissibility under TRE 901 may be proven by *circumstantial evidence*. [See *Sanchez v. Texas State Bd. of Medical Examiners*, 229. S.W.3d 498, 509 (Tex. App.-Austin 2007, no pet.)]

IV. RESPONSE TO PETITIONERS' OBJECTIONS TO, MOTION TO STRIKE AND MOTION TO EXCLUDE THE PREFILED TESTIMONY AND EXHIBITS OF GREG MESZAROS

- A. Response to Question No. 6, Page 5, Lines 9 – 11 and Exhibit Austin Meszaros No. 1.**
See response to "C," below.
- B. Questions No. 7 – 13 and the Responses, Page 5, Line 18 through Page 8, Line 3.**
See response to "C," below.

C. Question No. 14 and the Response, Page 8, Lines 5 – 8, and Austin Meszaros Exhibit No. 2.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

In the above three (3) items, Petitioners’ object to Mr. Meszaros’ description of his educational background, training, honors and awards of AWU during his tenure, his job duties and responsibilities, his education, training and background, his position in the City of Austin organization, and his resume. This testimony provides important information and factual predicate to assist the ALJs in determining the credibility of this witness, as well as in making a decision regarding whether reliance on Mr. Meszaros’ factual narrative regarding the operations, procedures, and status of the Austin Water Utility in relation to Petitioners is reasonable. Austin Water Utility is the seller in this contested rate case hearing regarding wholesale water and wastewater rates to customers of the City of Austin, and is entitled to show its procedures, documents and materials related to the determination of Petitioners’ cost of service.

The information complained of is admissible, although Petitioners would like to exclude all evidence of the procedures employed by Austin in establishing its wholesale rates. The claims raised in their Petitions, and the actions of the ALJs in granting interim relief establish that this hearing is more than just an “audit on the record.” Any witness is entitled to explain who he or she is, what their education and experience is, what their role in the governmental organization establishing the protested rates is, and what information the rate setting governmental agency used to establish the rates, as a basis for a determination of the justness and reasonableness of the rates. Mr. Meszaros’ resume, the honors and awards received by Austin Water Utility, and the City of Austin organizational chart is appropriate evidence to establish who Mr. Meszaros is and why it is reasonable to rely on him, as the City of Austin has, in establishing Austin wholesale water and wastewater rates, annually. Moreover, contrary to Petitioners’ assertions, Mr. Meszaros’ experience, and the recognition afforded the City of Austin do tend to make his testimony regarding the Austin Water Utility which he manages more credible than not. The nature and extent of the dispute *from Austin’s point of view* is relevant for the purposes of defining the reasonableness of Petitioners’ claims and complaints, to the extent they express them. After all, if there were no testimony on the record other than Austin’s

information regarding its procedures and methodology, then Austin would prevail. Petitioners' attempt to eliminate Austin's evidence of its costs and development of cost of service rates would simply erase all evidence of the matters in dispute put forward by Austin.

D. Questions No. 15 – 16 and the Responses, Page 8, Line 10 through Page 9, Line 2 and Austin Meszaros Exhibit No. 3.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

In these objections, Petitioners seek to exclude evidence regarding Mr. Meszaros’ professional background which lays a factual predicate for his testimony as Director of Austin Water Utility and his competency to sponsor the exhibits he sponsors regarding Austin’s cost of service in Fiscal Years 2012 through 2015. Under no circumstances could this testimony be irrelevant in a cost of service hearing. Clearly, Petitioners simply seek to exclude all evidence of Austin’s cost of service wholesale rates and then claim that Austin presented no evidence.

E. Question No. 17 and the Response, Page 9, Lines 4 – 8.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Here, Petitioners object to Mr. Meszaros presenting evidence of his “factual knowledge and professional experience.” There is no legitimate basis for this objection.

F. Questions No. 20 – 23 and the Responses, Page 11, Line 10 through Page 14, Line 4.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

In this objection, Petitioners seek to exclude testimony regarding the nature and extent of Austin’s relationship with its wholesale customers. There is no legitimate basis for excluding this testimony as irrelevant, because it addresses concerns raised in Petitioners’ pleadings and within the jurisdictional bases of this hearing.

G. Question No. 24 and the Response, Page 14, Lines 9 – 26.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

In this objection, Petitioners seek to exclude testimony regarding Austin's process for developing rates for wholesale customers. There is no legitimate basis for excluding this testimony as irrelevant, because it addresses concerns raised in Petitioners' pleadings and within the jurisdictional bases of this hearing. Also, Austin references the discussion above regarding testimony by fact and expert witnesses. Petitioners have been aware of Mr. Meszaros' designation as a fact witness for over a year, and have been provided with the documents he reviewed and the facts he testifies to since July 15, 2014. Petitioners are not harmed or prejudiced by Mr. Meszaros' statements regarding development of cost of service rates for Petitioners. Such testimony is relevant to a determination of the ultimate issues raised in Petitioners' pleadings and the jurisdictional bases of this hearing.

H. Question No. 26 and the Responses, Page 15, Lines 17 – 25, Austin Meszaros Exhibit No. 9 and Austin Meszaros Exhibit No. 10.

See response to "J," below.

I. Question No. 27 and the Response, Page 16, Lines 1 – 7, Austin Meszaros Exhibit No. 11 and Austin Meszaros Exhibit No. 12.

See response to "J," below.

J. Question No. 28 and the Response, Page 16, Lines 9 – 18.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

In the three (3) objections above, Petitioners attempt to exclude the very evidence which is the basis of their appeal and the basis of the cost of service rates. It is ridiculous to assert that the budgets for Fiscal Years 2012 – 2013 are not relevant to a determination of Petitioners' cost of service. Rate setting involves in the first instance a determination of a revenue requirement, which is set forth in the annual budget. The bases of Petitioners' cost of service and the items included within that cost of service is included in the annual budget of Austin Water Utility adopted by the Austin City Council. The certified copies of these annual revenue requirements raise no issues of proper authentication as Petitioners' suggest. Mr. Meszaros' sponsorship of these public records and reports establishes their admissibility under exceptions to the hearsay rule. TRE 803(6) and (7). During the hearing, under oath, Mr. Meszaros will introduce and

authenticate this public record of Austin Water Utility which are records of regularly conducted activity.

K. Question No. 29 and the Response, Page 16, Lines 20 – 26.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

In these objections, Petitioners object to Mr. Meszaros’ statements regarding the line item costs of wholesale service to Petitioners. Petitioners state, inexplicably, that Mr. Meszaros’ statements call for speculation. Rate setting is based on informed estimates regarding the revenue requirements for the coming year. Mr. Meszaros’ position entitles him to rely on information developed with respect to the business and public records of Austin Water Utility. And, contrary to Petitioners’ assertions, all the budget documents were either produced by the witness who sponsors them, and/or properly authenticated pursuant to Commission and SOAH procedural rules and TRE. Mr. Meszaros’ sponsorship of these public records and reports establishes their admissibility under exceptions to the hearsay rule. TRE 803(6) and (7). During the hearing, under oath, Mr. Meszaros will introduce and authenticate this public record of Austin Water Utility which are records of regularly conducted activity.

L. Questions No. 30 – 38 and the Responses, Page 17, Line 1 through Page 22, Line 11 and Austin Meszaros Exhibit Nos. 13 and 14.

See response to “M,” below.

M. Question No. 39 and the Response, Page 22, Lines 13 – 17.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

In these two (2) objections, Petitioners object to Mr. Meszaros’ statements regarding the annual public process and procedures used to determine the wholesale cost of water and wastewater service to Petitioners. This testimony addresses concerns raised by Petitioners in their pleadings and should be considered by the ALJs. Such testimony is relevant to a determination of the ultimate issues raised in Petitioners’ pleadings and the jurisdictional bases of this hearing.

N. Questions No. 40 – 41 and the Responses, Page 22, Line 21 through Page 23, Line 5.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

In these objections, Petitioners object to Mr. Meszaros’ testimony regarding the “Cost of Service Rate Study dated August 2009.” Petitioners assert that the 2008 Cost of Service Rate Study is not properly authenticated, and this is simply not true. Mr. Meszaros’ sponsorship of these public records and reports establishes their admissibility under exceptions to the hearsay rule. TRE 803(6) and (7). During the hearing, under oath, Mr. Meszaros will introduce and authenticate this public record of Austin Water Utility which are public records of regularly conducted activity.

O. Question No. 43 and the Response, Page 23, Line 19 through Page 24, Line 15, and exhibits Austin Meszaros Nos. 17 – 21.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Petitioners’ objections to Austin’s Cost of Service Models should be overruled. These models were received by Petitioners from Mr. Anders and used by Petitioners and Austin as the City’s cost of service rate models. Mr. Meszaros’ sponsorship of these public records and reports establishes their admissibility under exceptions to the hearsay rule. TRE 803(6) and (7). During the hearing, under oath, Mr. Meszaros will introduce and authenticate this public record of Austin Water Utility which are public records of regularly conducted activity.

P. Questions No. 46 – 48 and the Responses, Page 25, Line 21 though Page 28, Line 7.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

The information provided by Greg Meszaros regarding the 2008 Cost of Service Rate study, and participation in that study by the wholesale customer class is relevant evidence in a contested cost of service hearing. There is absolutely no legitimate, basis for excluding testimony regarding the public procedures used to develop cost of service rates.

Q. Question No. 53 and Response, Page 29, Line 16 – 22, and Austin Meszaros Exhibit No. 23.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

The affidavit of Greg Meszaros was previously attached to the Motion to Consolidate the wholesale water and wastewater rate appeals. The description of the "annual procedures used by Austin in setting cost of service water and wastewater rates" is relevant evidence in a contested case hearing.

R. Question No. 55 and the Response, Page 30, Lines 6 – 20.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

The City of Austin relies on Mr. Meszaros to oversee the provision of water and wastewater service to Petitioners, at the cost of service rates established annually. The specific underlining facts of those managerial considerations are important to the trier of fact to establish the procedures used by Austin to develop its cost of service rates.

S. Question No. 56 and the Response, Page 31, Line 4 through Page 32, Line 6.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Austin is entitled to present testimony which addresses claims raised by Petitioners in their First Amended Petition, including the inclusionary processes available to Petitioners for the purpose of establishing just and reasonable rates. Additionally, the evidence Petitioners would strike includes direct evidence regarding the changes from the current cost of service to Petitioners that Austin has made. Under no circumstances could that testimony be considered irrelevant or immaterial to an inquiry into the cost of service for Petitioners.

T. Questions No. 58 – 59 and the Responses, Page 33, Line 16, through Page 34, Line 9.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Information regarding the prior rate disputes and their contractual resolution is relevant to this case, because it establishes the contractual nature of Austin's rate setting, contrary to Petitioners' assertions, and Austin's compliance with the Water and Wastewater Rate Settlement Agreements.

U. Question No. 62 and Response, Page 35, Lines 7 – 19.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

As the Director of Austin Water Utility, which provides wholesale service to the Petitioners, Mr. Meszaros is an appropriate person to provide testimony about the wholesale customers' relationship with the City of Austin, including their participation in the Cost of Service Study. It is impossible to explain why Petitioners' participation in the cost of service study could not be relevant in a cost of service hearing. And, Petitioners not only object to this discussion of the procedures Austin will use to determine their cost of service, they also object to any testimony regarding the procedures Austin actually did use to establish the cost of service under the protested rate. (*See*, objections to the testimony of Michael P. Castillo.)

V. RESPONSE TO PETITIONERS’ OBJECTIONS TO THE PREFILED TESTIMONY AND EXHIBITS OF BART JENNINGS

Generally Austin strongly disagrees with Petitioners’ assessment of the relevance of Mr. Jennings’ testimony. Mr. Jennings is the manager with AWU who is singularly most responsible for direct contact with representatives of the Petitioners. He has negotiated agreements with Petitioners’ representatives and can attest to the “sophisticated” nature of the Petitioners’ demands and needs (TCEQ comments on §291.138). Contrary to the partial picture presented by Petitioners who submit *some* of the water and wastewater related contracts between Petitioners and the City of Austin, Mr. Jennings completes the picture by sponsoring all the contracts and amendments concerning water and wastewater utility service, which Mr. Jennings maintains for the City of Austin as part of his job duties and responsibilities. These are documents which establish the complete nature of Austin’s relationship with Petitioners which is critical to a determination of the cost of service. Not surprisingly, Petitioners seek, through their objections to Mr. Jennings’ testimony, to obscure the Petitioners’ contractual relationship with Austin. However, Mr. Jennings’ testimony is important for the Commission to assess all relevant live issues in these cases including cost of service rate issues. The contractual documents are voluminous, but will be available in the hearing room for the record. Mr. Jennings will sponsor and authenticate the exhibits under oath during the hearing.

A. Questions No. 3 – 8 and the Responses, Page 3, Line 12 through Page 6, Line 13 and Austin Jennings Exhibit No. 1.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

All of the questions and responses are included to apprise the Commission of Mr. Jennings’ education, training, employment background and experience in the area of Austin’s relationship with its wholesale customers generally and Petitioners, specifically, the testimony shows Mr. Jennings’ qualifications to offer testimony on behalf of Austin and to sponsor AWU’s exhibits.

B. Question No. 5 and the Response, Page 4, Line 17 through Page 6, Line 23.

See the “General Response to Petitioners’ Objections” identified above.

C. Question No.9 and the Response, Page 6, Lines 15 through 22.

See the “General Response to Petitioners’ Objections” identified above.

D. Question No. 11 and the Response, Page 7, Lines 8 through 13, and Austin Jennings Exhibit No. 2.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

The exhibit is admissible under TRE 901 (a) and (b) (1) because Mr. Jennings is certainly qualified to identify the ordinances which he uses to perform his duties. [See *Baker v. Robinson*, 305 S.W.3d, 305 S.W.3d 783, 790 (Tex. App.- Waco 2009) citing *Dimler-Benz Aktiengesellschaft v. Olson*, 21 S.W.3d 707,717 (Tex. App.- Austin 200, pet. Dism’d w.o.j.); *E.P. Operating Co. v. Sonora Exploration Corp.*, 862 S.W.2d 149,154 (Tex. App.- Houston [1st Dist.] 1993, writ denied)]

E. Question No.13 and the Response, Page 8, Lines 17 through 22, and Austin Jennings Exhibit No. 3.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Petitioners’ objection goes to the weight rather than the admissibility of the exhibit. Also, the documents are properly authenticated under TRE 901(a) and (b) (1).

F. Questions No. 14 - 17, Page 8 and the Responses, Line 24 through Page 10, Line 8.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to offer expert testimony through Mr. Jennings. His testimony merely summarizes the bases for the contractual relationship between Austin and North Austin MUD.

G. Question No. 18 and the Response, Page 10, Lines 10 through 16.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to offer expert testimony through Mr. Jennings. His testimony merely summarizes his experience of the contractual relationship between Austin and North Austin MUD.

H. Question No. 19 and the Response, Page 10, Lines 21 through 25.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Petitioners’ objection goes to the weight rather than admissibility of the exhibit. Moreover, the testimony is within Mr. Jennings’ personal knowledge.

I. Questions No. 20 – 23 and the Responses, Page 11, Line 1 through Page 12, Line 16, and Austin Jennings Exhibit No. 4.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Petitioners’ objection goes to the weight rather than the admissibility of the exhibit. Also, the documents are properly authenticated under TRE 901(a) and (b) (1).

J. Question No.24, Page 12, Lines 18 through 24.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to offer expert testimony through Mr. Jennings. His testimony merely summarizes his experience of the contractual relationship between the City and Northtown MUD.

K. Question No. 25 and the Response, Page 13, Lines 4 through 10.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Petitioners’ objection goes to the weight rather than the admissibility of the exhibit. Also, the document is properly authenticated under TRE 901 (a) and (b) (1).

L. Question No. 26, Page 13, Lines 12 through 18, and Austin Jennings Exhibit No. 5.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Petitioners’ objection goes to the weight rather than the admissibility of the exhibit. Also, the document is properly authenticated under TRE 901 (a) and (b) (1).

M. Question No. 27 and the Response, Page 13, Line 20 through Page 14, Line 2.

See the “General Response to Petitioners’ Objections” identified above.

N. Question No. 28 and the Response, Page 14, Lines 4 through 10.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to offer expert testimony through Mr. Jennings. His testimony merely summarizes his experience of the contractual relationship between the City and WCID No. 10.

O. Question No. 29 and the Response, Page 14, Line 15 through 20.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Petitioners’ objection goes to the weight rather than the admissibility of the exhibit. Also, the document is properly authenticated under TRE 901 (a) and (b) (1).

P. Questions No. 30 – 31 and the Responses, Page 14, Line 22 through Page 15, Line 17, and Austin Jennings Exhibit No. 6.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to offer expert testimony through Mr. Jennings. His testimony merely summarizes the bases of the contractual relationship between Austin and Wells Branch MUD. Petitioners' objection goes to the weight rather than the admissibility of the exhibit. Also, the document is properly authenticated under TRE 901(a) and (b)(1).

Q. Question No. 32 and the Response, Page 15, Lines 19 through 27.

See the "General Response to Petitioners' Objections" identified above.

R. Questions No. 33 – 34 and the Responses, Page 16, Lines 1 through 23.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Petitioners' objection goes to the weight rather than the admissibility of Mr. Jennings' testimony.

S. Question No. 35 and the Response, Page 16, Line 25 through Page 17, Line 4.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Austin is not attempting to offer expert testimony through Mr. Jennings. His testimony merely summarizes his experience of the contractual relationship between Austin and Wells Branch MUD.

T. Questions No. 36 – 37 and the Responses, Page 17, Lines 9 through 24.

See the "General Response to Petitioners' Objections" identified above.

U. Question No. 38, Page 17, Line 26 through Page 18, Line 20.

See the "General Response to Petitioners' Objections" identified above.

V. Question No. 39 and the Response, Page 18, Line 22 through Page 19, Line 11.

See the "General Response to Petitioners' Objections" identified above.

W. Questions No. 40 – 41 and the Responses, Page 19, Line 13 through Page 20, Line 5.

See the "General Response to Petitioners' Objections" identified above.

X. Question No. 42 and the Response, Page 20, Line 7 through 12.

See the "General Response to Petitioners' Objections" identified above.

Y. Question No. 43 and the Response, Page 20, Line 14 through 21.

See the “General Response to Petitioners’ Objections” identified above.

**VI. RESPONSE TO PETITIONERS’ OBJECTIONS TO THE PREFILED
TESTIMONY AND EXHIBITS OF DREMA GROSS**

**A. Questions No. 3-10 and Responses, Page 3, Line 12 Through Page 7, Line 4, and
Austin Gross Exhibit No. 1-3.**

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

All of the questions and response are included to apprise the Commission of Ms. Gross’ education, training, employment background and experience in the field of water utility operation and management; as well as her qualifications to speak to AWU’s cost of service development and rate making. The testimony shows Ms. Gross’ qualifications to offer testimony on behalf of Austin and to sponsor AWU’s exhibits. Petitioners’ stated initially that water conservation costs were not properly included in Petitioner’s cost of service. Ms. Gross’ testimony is essential to a determination the Petitioners’ cost of service should reflect their participation in Austin’s Water Conservation Programs.

B. Question No. 11 and Response, Page 7, Line 6 Through 11.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Ms. Gross as an expert. Her understanding of the requirements of the Utility to serve its customers in spite of drought and dwindling resources informs her decisions as a manager for AWU.

C. Question No. 15 and Response, Page 9, Line 11 Through 21.

See the “General Response to Petitioners’ Objections” identified above.

D. Question No. 16 and Response, Page 9, Line 16 Through Page 10, Line 8.

See the “General Response to Petitioners’ Objections” identified above.

E. Questions No. 17-18 and Responses, Page 10, Line 10 Through Page 11, Line 13.

See the “General Response to Petitioners’ Objections” identified above.

F. Question No. 19 and Response, Page 11, Line 17 Through 23.

See the “General Response to Petitioners’ Objections” identified above.

G. Question No. 20 and Response, Page 11, Line 25 Through Page 12, Line 5.

See the “General Response to Petitioners’ Objections” identified above.

H. Question No. 21 and Response, Page 12, Line 7 Through 20.

See the “General Response to Petitioners’ Objections” identified above.

I. Question No. 22 and Response, Page 12, Line 22 Through Page 13, Line 13.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Ms. Gross as an expert. Her understanding of the requirements of the Utility to serve its customers in spite of drought and dwindling water resources informs her decisions as a manager for AWU.

J. Question No. 23 and Response, Page 13, Line 15 Through 27.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Ms. Gross as an expert. Her understanding of the requirements of the Utility to serve its customers in spite of drought and dwindling water resources informs her decisions as a manager for AWU.

K. Questions No. 24-25 and Responses, Page 14, Line 1 Through Page 15, Line 14.

See the “General Response to Petitioners’ Objections” identified above.

L. Question No. 26 and Response, Page 15, Line 16 Through Page 16, Line 3.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Ms. Gross as an expert. Her understanding of the requirements of the Utility to serve its customers in spite of drought and dwindling water resources informs her decisions as a manager for AWU.

M. Question No. 28 and Response, Page 16, Line 11 Through 15, and Austin Gross Exhibit 7.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

This exhibit is admissible under TRE 901(a) and (b)(1). Moreover, the document is included in Austin Meszaros Exhibit 10.

N. Question No. 29, Page 16, Line 17 Through 19, and Austin Meszaros Exhibit 24.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

This exhibit is admissible under TRE 901(a) and (b)(1). Moreover, the document is included in Austin Meszaros Exhibit 24.

O. Question No. 30 and Response, Page 16, Line 21 Through 27, and Austin Meszaros Exhibit 24.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

The objection goes to the weight and not the admissibility of the question and response.

P. Question No. 31 and Response, Page 17, Line 4 Through 16.

See the “General Response to Petitioners’ Objections” identified above.

Q. Questions No. 32-35, Page 17, Line 21 Through Page 19, Line 9.

See the “General Response to Petitioners’ Objections” identified above.

R. Questions No. 23-37, Page 19, Line 11 Through 24.

See the “General Response to Petitioners’ Objections” identified above.

S. Question No. 38 and Response, Page 19, Line 26 Through Page 20, Line 8.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Ms. Gross as an expert. Her understanding of the requirements of the Utility to serve its customers in spite of drought and dwindling resources informs her decisions as a manager for AWU.

T. Question No. 39 and Response, Page 20, Line 12 Through 26.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Ms. Gross as an expert. Her understanding of the requirements of the Utility to serve its customers in spite of drought and dwindling water resources informs her decisions as a manager for AWU.

VII. RESPONSE TO PETITIONERS’ OBJECTIONS TO THE PREFILED TESTIMONY AND EXHIBITS OF TERESA LUTES

Here again, Petitioners seek to exclude testimony by a City of Austin witness on the basis of whether such testimony is fact or expert testimony. In the case of Teresa Lutes, it makes no difference whether her testimony is considered as both factual and opinion. Petitioners have been provided with ample notice of Ms. Lutes, her testimony, her experience and qualifications and the documents she reviewed. It is meaningless to argue about the nature of her testimony. She is qualified to offer fact and opinion and Petitioners have received notice of her facts and opinions and the bases therefore.

A. Questions No. 3-9 and Responses, Page 3, Line 12 Through Page 9, Line 24, and Austin Lutes Exhibit No. 1.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

All of the questions and responses are included to apprise the Commission of Ms. Lutes’ education, training, employment background and experience in the field of water utility operation and management. The testimony shows Ms. Lutes’ qualification to offer testimony on behalf of Austin and to sponsor AWU’s exhibits.

B. Question No. 10 and Response, Page 4, Line 22 Through 27.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Ms. Lutes as an expert. She has extensive experience actually working as an engineer at AWU. His testimony is meant to aid in the Commission’s

understanding of the physical role that Water Treatment Plant Number 4 (“WTP4”) plays in AWU’s overall water and wastewater system.

C. Question No. 12 and Response, Page 5, Line 19 Through 21, and Austin Lutes Exhibit No. 2.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

The exhibit is admissible under TRE 901 (a) and (b) (1). Ms. Lutes is qualified to identify a map and schematic of the water and wastewater system in which she has worked for the last 29 years as an engineer.

D. Questions No. 17-19 and Responses, Page 7, Line 20 Through Page 8, Line 27.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Ms. Lutes is qualified to testify about how the physical location of Austin’s overall system is important to how it provides water to its retail and wholesale customers. This information is obviously important in determining costs for providing water service throughout Austin’s system and what equipment and facilities are used and useful in providing retail and wholesale water and wastewater services.

E. Question No. 20 and Response, Page 9, Line 3 Through Page 11, Line 114, and Austin Lutes Exhibit No. 3.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

The exhibit is admissible under TRE 901(a) and (b)(1). Ms. Lutes ‘ testimony is not hearsay because it reflects her personal knowledge of the intended use of WTP4 in Austin’s retail and wholesale water system as it is designed and how it will be implemented, with her managerial assistance.

F. Question No. 21 and Response, Page 9, Line 16 Through Page 10, Line 4.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Ms. Lutes as an expert. She has extensive experience actually working as an engineer at AWU. His testimony is meant to aid in the Commission’s

understanding of the physical role that Water Treatment Plant Number 4 (“WTP4”) plays in AWU’s overall water and wastewater system.

G. Question No. 22 and Response, Page 10, Line 6 Through Page 11, Line 8, and Austin Lutes Exhibit No. 4.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Ms. Lutes is qualified to sponsor this testimony under TRE 701 based on her knowledge of the specific subject matter and her operational experience. To the extent that Ms. Lutes describes risks as she sees them, the objection goes to the weight rather than the admissibility of her testimony. Austin Lutes Exhibit 4 is admissible under TRE 901(a) and (b)(1).

H. Question No. 23 and Response, Page 11, Line 10 Through Page 13, Line 16.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Ms. Lutes as an expert. She has extensive experience actually working as an engineer at AWU. His testimony is meant to aid in the Commission’s understanding of the physical role that Water Treatment Plant Number 4 (“WTP4”) plays in AWU’s overall water and wastewater system.

Petitioners’ objections to Ms. Lutes’ descriptions of the additional benefits of WTP4 go to the weight rather than the admissibility of her testimony.

I. Question No. 24 and Response, Page 13, Line 18 Through Page 14, Line 3.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Ms. Lutes as an expert. She has extensive experience actually working as an engineer at AWU. His testimony is meant to aid in the Commission’s understanding of the physical role that Water Treatment Plant Number 4 (“WTP4”) plays in AWU’s overall water and wastewater system.

J. Question No. 26 and Response, Page 14, Line 6 Through 22.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Petitioners’ objections to this question and response go to the weight rather than the admissibility of the testimony.

K. Question No. 27, Page 14, Line 26 Through Page 15, Line 3.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Petitioners’ objections to this question and response go to the weight rather than the admissibility of the testimony.

VIII. RESPONSE TO PETITIONERS’ OBJECTIONS TO, MOTION TO EXCLUDE AND MOTION TO STRIKE THE PREFILED TESTIMONY AND EXHIBITS OF MICHAEL P. CASTILLO

With the objections to the testimony of Michael P. Castillo, Petitioners seek to hide or erase the fact that Austin Water Utility provides water and wastewater utility service to Petitioners pursuant to contracts, both contracts consenting to the creation and operation of the districts within Austin’s extraterritorial jurisdiction, and the Water and Wastewater Rate Settlement Agreement, or, in the case of Travis County Water Control & Improvement District No. 10, the Water Rate Settlement Agreement. The terms and conditions of the settlement of these previous rate complaints which involved two (2) of the same Petitioners established methods and participation in City of Austin rate setting for Austin’s wholesale customers. Additionally, these procedures and benefits were approved by the Texas Water Commission in the May 17, 1990 Consent Order, finalizing the previous rate dispute, and continue to be provided by Austin to all wholesale customers, not just the individual signatories. These water rate contracts were offered in the Prefiled Testimony of Bart Jennings, as follows, which Petitioners also objected to:

1. PFT of Bart Jennings – 55: Item 3, 8/24/1990 Water Rate Settlement Agreement [between Travis County Water Control & Improvement District No. 10 and the City of Austin]; and

2. PFT of Bart Jennings – 57: Item 8, 4/10/1990 Water and Wastewater Rate Settlement Agreement [between Wells Branch MUD and the City of Austin].

These approved procedures for arriving at a cost of service for wholesale customers, the ensuing cost of service rate studies conducted by Austin with the participation by Petitioners and/or representatives of their wholesale customer class is relevant to address claims made by Petitioners in their pleadings and in their requests and receipt of interim water rates. The nature and extent of the participatory and inclusive procedures are just as much a part of the cost of service to Petitioners as the specific dollar amounts for the individual items included in Austin's revenue requirement which Petitioners seek to exclude from their cost of service. Petitioners cannot reasonably claim that they were excluded from the process of rate setting, that their interests were not represented, and that their only recourse is a contested case hearing which must be strictly confined to a consideration of the "dollars and cents" of the cost of service.

As Austin has stated repeatedly, this approach is simply not the law which applies to these proceedings. Austin is entitled to present its case for cost of service and just and reasonable rates, and need not confine itself to a mere accounting for the benefit of Petitioners.

A. Questions No. 3 – 10 and the Responses, Page 3, Line 12 through Page 6, Line 27, and Austin Castillo Exhibit No. 1.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Petitioners seek to remove the predicate for Mr. Castillo's testimony. Mr. Castillo is entitled to identify himself, his training and educational background, his experience, and his professional resume. With this information, the ALJs can evaluate whether the factual testimony offered by Mr. Castillo is credible and reliable under Commission Rules and the Texas Rules of Evidence.

B. Question No. 11 and the Response, Page 7, Lines 4 – 5 and Austin Castillo Exhibit Nos. 2 and 3.

See response to "C," below.

C. Question No. 12 and the Response, Page 7, Lines 10 – 12 and Austin Castillo Exhibit Nos. 2, 4, and 6.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

In these two (2) objections, Petitioners seek to exclude Mr. Castillo's testimony regarding his purpose in testifying and Austin's cost of service rate studies following the Water and Wastewater Rate Settlement Agreement procedures. Austin's consideration of the wholesale customer cost of service in 1992, 1999, and 2008 through inclusive and participatory proceedings is relevant to a consideration of Petitioners' cost of service today. The procedures and consensual development of Austin's cost of service methodology is part of Petitioners' cost of service, dating from the earlier rate case and the contractual relationship among Austin and its wholesale customers. The 1992 Cost of Service Rate Study was the first Austin cost of service rate study which complied with the terms and conditions of the Water and Wastewater Rate Settlement agreements pursuant to which Austin establishes its cost of service rates.

D. Questions No. 13 – 19 and the Responses, Page 7, Line 14 through Page 11, Line 4, and Austin Castillo Exhibit Nos. 2 and 3.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Austin's consideration of the wholesale customer cost of service in 1992 through inclusive and participatory proceedings is relevant to a consideration of Petitioners' cost of service today. The procedures and consensual development of Austin's cost of service methodology is part of Petitioners' cost of service, dating from the earlier rate case and the contractual relationship among Austin and its wholesale customers. The 1992 Cost of Service Rate Study was the first Austin cost of service rate study which complied with the terms and conditions of the Water and Wastewater Rate Settlement agreements pursuant to which Austin establishes its cost of service rates.

E. Questions No. 20 – 26 and the Responses, Page 11, Line 6 through Page 14, Line 13, and Austin Castillo Exhibit Nos. 4 and 5.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Austin's consideration of the wholesale customer cost of service in 1999 through inclusive and participatory proceedings is relevant to a consideration of Petitioners' cost of service today. The procedures and consensual development of Austin's cost of service methodology is part of Petitioners' cost of service, dating from the earlier rate case and the contractual relationship among Austin and its wholesale customers. The 1999 Cost of Service

study continued compliance with the terms and conditions of the Water and Wastewater Rate Settlement agreements pursuant to which Austin establishes its cost of service rates.

F. Questions No. 27 – 41 and the Responses, Page 14, Line 15 through Page 24, Line 24, and Austin Castillo Exhibit Nos. 6 – 10.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

In this objection, Petitioners seek to exclude Austin’s consideration of the cost of service for wholesale customers in the 2008 Cost of Service Rate Study. While Petitioners and the PUC staff complain that Austin did not provide sufficient information regarding its cost of service methodology, Petitioners here seek to exclude testimony and remove the factual predicate which explains the issues raised in the cost of service study and their resolution. Clearly, this testimony addressing cost of service issues raised by wholesale customers and others is relevant and material. Excluding the factual and procedural bases of Austin’s cost of service rate study, would deprive Austin of the opportunity to present its cost of service case.

G. Questions No. 42 – 50 and the Responses, Page 24, Line 26 through Page 28, Line 19, and Austin Castillo Exhibit Nos. 11 – 13.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

In this objection, Petitioners seek to exclude Austin’s consideration of the cost of service issues raised by the Public Involvement Committee on January 7, 2008 in the 2008 Cost of Service Rate Study. While Petitioners and the PUC staff complain that Austin did not provide sufficient information regarding its cost of service methodology, Petitioners here seek to exclude testimony and remove the factual predicate which explains the issues raised in the cost of service study and their resolution. Clearly, this testimony addressing cost of service issues raised by wholesale customers and others is relevant and material. Excluding the factual and procedural bases of Austin’s cost of service rate study, would deprive Austin of the opportunity to present its cost of service case.

H. Questions No. 51 – 58 and the Responses, Page 28, Line 21 through Page 31, Line 6, and Austin Castillo Exhibit No. 14.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

In this objection, Petitioners seek to exclude Austin's consideration of the cost of service issues raised by the Public Involvement Committee on February 19, 2008 in the 2008 Cost of Service Rate Study. While Petitioners and the PUC staff complain that Austin did not provide sufficient information regarding its cost of service methodology, Petitioners here seek to exclude testimony and remove the factual predicate which explains the issues raised in the cost of service study and their resolution. Clearly, this testimony addressing cost of service issues raised by wholesale customers and others is relevant and material. Excluding the factual and procedural bases of Austin's cost of service rate study, would deprive Austin of the opportunity to present its cost of service case.

I. Question No. 59 – 81 and the Responses, Page 31, Line 8 through Page 38, Line 15, and Austin Castillo Exhibit Nos. 15 – 18.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

In this objection, Petitioners seek to exclude Austin's consideration of the cost of service issues raised by the Public Involvement Committee on March 3, 2008 in the 2008 Cost of Service Rate Study. While Petitioners and the PUC staff complain that Austin did not provide sufficient information regarding its cost of service methodology, Petitioners here seek to exclude testimony and remove the factual predicate which explains the issues raised in the cost of service study and their resolution. Clearly, this testimony addressing cost of service issues raised by wholesale customers and others is relevant and material. Excluding the factual and procedural bases of Austin's cost of service rate study, would deprive Austin of the opportunity to present its cost of service case.

J. Question No. 82 – 84 and the Responses, Page 39, Line 19 through Page 84, Line 24.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Petitioners seek to exclude evidence regarding the annual updates to Austin's cost of service rate models for each budget year. This information is obviously relevant, as it directly addresses a concern of the PUC staff and their prefiled testimony that the 2008 Cost of Service Rate Study "was finalized by the City in August of 2008, at least four years prior to the 2013

year used for the cost of service. The study is stale, especially in light of the growth experienced by the City during these years.”

**IX. RESPONSE TO PETITIONERS’ OBJECTIONS TO, MOTION TO EXCLUDE
AND MOTION TO STRIKE THE PREFILED TESTIMONY AND EXHIBITS OF DAVID
A. ANDERS**

A. Questions No. 3-9 and Responses, Page 3, Line 12 Through Page 9, Line 24, and Austin Anders Exhibit No. 1.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

All of the questions and response are included to apprise the Commission of Mr. Anders’ educations, training, employment background and experience in the field of water utility operation and management; as well as his qualifications to speak to AWU’s cost of service development and rate making. The testimony shows Mr. Anders’ qualifications to offer testimony on behalf of Austin and to sponsor AWU’s exhibits.

B. Question No. 10 and Response, Page 5, Line 26 Through Page 6, Line 10, and Austin Anders Exhibit No. 2.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

All of the questions and response are included to apprise the Commission of Mr. Anders’ educations, training, employment background and experience in the field of water utility operation and management; as well as his qualifications to speak to AWU’s cost of service development and rate making. The testimony shows Mr. Anders’ qualifications to offer testimony on behalf of Austin and to sponsor AWU’s exhibits.

C. Question No. 11 and Response, Page 6, Line 12 Through 19.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

All of the questions and response are included to apprise the Commission of Mr. Anders’ educations, training, employment background and experience in the field of water utility operation and management; as well as his qualifications to speak to AWU’s cost of service

development and rate making. The testimony shows Mr. Anders' qualifications to offer testimony on behalf of Austin and to sponsor AWU's exhibits.

D. Questions No. 21-22 and Responses, Page 11, Line 17 Through Page 12, Line 5, and Austin Anders Exhibit No. 3-5.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Mr. Anders is qualified under TRE 901(a) and (b)(1) to sponsor Austin Anders Exhibits 3, 4 and 5. Moreover, Austin Anders Exhibits 4 and 5 are included in the voluminous budget documents sponsored by witness Greg Meszaros. [Austin Meszaros Exhibits 9-13] Austin contends that Petitioners' objection based on the lack of "actual cost incurred by the City" represents a misunderstanding of Austin's presentation. Austin uses forecasted expenses to develop its costs of service for each fiscal year. Therefore, the budgeted costs represent the underlying data that Austin will use to support its rates to the Commission. Petitioners' objections to Austin witness statements regarding Austin Water Utility's development of wholesale water and wastewater rates is nonsensical to a large extent. Rate setting is, by definition, a predictive exercise, based on the estimates of annual revenues required and wholesale utility services sold. Under PUC Rules, in determining the Cost of Service:

P.U.C. Subst. R. §24.135 (a) The commission shall follow the mandates of the TWC, Chapters 12 and 13, to calculate the annual cost of service. The commission shall rely on any reasonable methodologies set by contract which identify costs of providing service and/or allocate such costs in calculating the cost of service.

Accordingly, it is essential for Austin to set forth the methodology it used to adopt its water and wastewater rates under the Consent Agreements and the Water and Wastewater Rate Settlement Agreements. Under Austin's theory of this case, these procedures are essential to a determination of whether Austin's rates are just and reasonable, which Austin believes involves a question of both the procedures used to develop the rates and the actual calculation of Petitioners' cost of service. While Petitioners would like to limit the Commission's consideration of this case to dollars and cents only, with no background information or factual bases to be included in the record, under Commission rules, Austin has the right to include information regarding the methodologies used in developing Petitioners' cost of service. Moreover, under any reasonable

reading of the Texas Rules of Evidence and Commission rules at P.U.C. Subst. R, §24.135, any witness is entitled to provide information on the record regarding a determination of utility rates, which will enable the trier of fact to determine whether the witness' testimony is reliable. If the ALJs were to sustain Petitioners' objections, then Austin would be deprived of the opportunity to present necessary information on its rate setting—provided by the City staff, itself—which is the subject of this contested case hearing. Austin will show that it used a reasonable methodology in adopting its Fiscal Year 2013 wholesale water and wastewater rates, and also that it did provide information to all parties regarding the cost allocations among customers, which Petitioner used to develop its prefiled testimony, and which the PUC staff did not.

E. Question No. 25 and Response, Page 13, Line 5 Through 7.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

This testimony is not hearsay. Mr. Anders is simply describing the established assumptions upon which AWU relies to develop its forecasted costs. The example used by Mr. Anders’ testimony is a written directive that is included in the document itself that is otherwise admissible as an exhibit sponsored by Greg Meszaros.

F. Questions No. 27-29 and Responses, Page 14, Line 1 through 25.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Petitioners’ objections to Austin witness statements regarding Austin Water Utility’s development of wholesale water and wastewater rates is nonsensical to a large extent. Rate setting is, by definition, a predictive exercise, based on the estimates of annual revenues required and wholesale utility services sold. Under PUC Rules, in determining the Cost of Service:

P.U.C. Subst. R. §24.135 (a) The commission shall follow the mandates of the TWC, Chapters 12 and 13, to calculate the annual cost of service. The commission shall rely on any reasonable methodologies set by contract which identify costs of providing service and/or allocate such costs in calculating the cost of service.

Accordingly, it is essential for Austin to set forth the methodology it used to adopt its water and wastewater rates under the Consent Agreements and the Water and Wastewater Rate Settlement Agreements. Under Austin’s theory of this case, these procedures are essential to a determination

of whether Austin's rates are just and reasonable, which Austin believes involves a question of both the procedures used to develop the rates and the actual calculation of Petitioners' cost of service. While Petitioners would like to limit the Commission's consideration of this case to dollars and cents only, with no background information or factual bases to be included in the record, under Commission rules, Austin has the right to include information regarding the methodologies used in developing Petitioners' cost of service. Moreover, under any reasonable reading of the Texas Rules of Evidence and Commission rules at P.U.C. Subst. R, §24.135, any witness is entitled to provide information on the record regarding a determination of utility rates, which will enable the trier of fact to determine whether the witness' testimony, is reliable. If the ALJs were to sustain Petitioners' objections, then Austin would be deprived of the opportunity to present necessary information on its rate setting—provided by the City staff, itself—which is the subject of this contested case hearing. Austin will show that it used a reasonable methodology in adopting its Fiscal Year 2013 wholesale water and wastewater rates, and also that it did provide information to all parties regarding the cost allocations among customers, which Petitioner used to develop its prefiled testimony, and which the PUC staff did not.

G. Questions No. 34-35, Page 18, Line 1 Through Page 19, Line 3, and Austin Anders Exhibit No. 7.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities informs his decisions as a manager for AWU. Austin Anders Exhibit 7 is admissible under TRE 901(a) and (b)(1) because it is a published document that represents Austin's 2012 and 2013 Austin Water Utility Revenue Bonds. These are the documents that managers such as Mr. Anders rely upon in the ordinary conduct of his affairs as an AWU manager and is therefore admissible under 16 TAC §22.221(a).

H. Questions No. 37-38 and Responses, Page 19, Line 13 Through Page 20, Line 10.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities informs his decisions as a manager for AWU.

I. Questions No. 41-42 and Responses, Page 21, Line 8 Through Page 22, Line 12.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities applicable to AWU informs his decisions as a manager for AWU.

J. Questions No. 43-44 and Responses, Page 22, Line 14 Through Page 23, Line 14.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Petitioners’ objections to Austin witness statements regarding Austin Water Utility’s development of wholesale water and wastewater rates is nonsensical to a large extent. Rate setting is, by definition, a predictive exercise, based on the estimates of annual revenues required and wholesale utility services sold. Under PUC Rules, in determining the Cost of Service:

P.U.C. Subst. R. §24.135 (a) The commission shall follow the mandates of the TWC, Chapters 12 and 13, to calculate the annual cost of service. The commission shall rely on any reasonable methodologies set by contract which identify costs of providing service and/or allocate such costs in calculating the cost of service.

Accordingly, it is essential for Austin to set forth the methodology it used to adopt its water and wastewater rates under the Consent Agreements and the Water and Wastewater Rate Settlement Agreements. Under Austin’s theory of this case, these procedures are essential to a determination of whether Austin’s rates are just and reasonable, which Austin believes involves a question of both the procedures used to develop the rates and the actual calculation of Petitioners’ cost of service. While Petitioners would like to limit the Commission’s consideration of this case to dollars and cents only, with no background information or factual bases to be included in the record, under Commission rules, Austin has the right to include information regarding the methodologies used in developing Petitioners’ cost of service. Moreover, under any reasonable reading of the Texas Rules of Evidence and Commission rules at P.U.C. Subst. R, §24.135, any witness is entitled to provide information on the record regarding a determination of utility rates, which will enable the trier of fact to determine whether the witness’ testimony is reliable. If the ALJs were to sustain Petitioners’ objections, then Austin would be deprived of the opportunity to

present necessary information on its rate setting—provided by the City staff, itself—which is the subject of this contested case hearing. Austin will show that it used a reasonable methodology in adopting its Fiscal Year 2013 wholesale water and wastewater rates, and also that it did provide information to all parties regarding the cost allocations among customers, which Petitioner used to develop its prefiled testimony, and which the PUC staff did not.

K. Question No. 45 and Response, Page 23, Line 16 Through Page 24, Line 7.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities applicable to AWU informs his decisions as a manager for AWU.

L. Question No. 50 and Response, Page 25, Line 19 Through 25.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities applicable to AWU informs his decisions as a manager for AWU. Petitioners’ objections to Austin witness statements regarding Austin Water Utility’s development of wholesale water and wastewater rates is nonsensical to a large extent. Rate setting is, by definition, a predictive exercise, based on the estimates of annual revenues required and wholesale utility services sold. Under PUC Rules, in determining the Cost of Service:

P.U.C. Subst. R. §24.135 (a) The commission shall follow the mandates of the TWC, Chapters 12 and 13, to calculate the annual cost of service. The commission shall rely on any reasonable methodologies set by contract which identify costs of providing service and/or allocate such costs in calculating the cost of service.

Accordingly, it is essential for Austin to set forth the methodology it used to adopt its water and wastewater rates under the Consent Agreements and the Water and Wastewater Rate Settlement Agreements. Under Austin’s theory of this case, these procedures are essential to a determination of whether Austin’s rates are just and reasonable, which Austin believes involves a question of both the procedures used to develop the rates and the actual calculation of Petitioners’ cost of service. While Petitioners would like to limit the Commission’s consideration of this case to dollars and cents only, with no background information or factual bases to be included in the

record, under Commission rules, Austin has the right to include information regarding the methodologies used in developing Petitioners' cost of service. Moreover, under any reasonable reading of the Texas Rules of Evidence and Commission rules at P.U.C. Subst. R, §24.135, any witness is entitled to provide information on the record regarding a determination of utility rates, which will enable the trier of fact to determine whether the witness' testimony is reliable. If the ALJs were to sustain Petitioners' objections, then Austin would be deprived of the opportunity to present necessary information on its rate setting—provided by the City staff, itself—which is the subject of this contested case hearing. Austin will show that it used a reasonable methodology in adopting its Fiscal Year 2013 wholesale water and wastewater rates, and also that it did provide information to all parties regarding the cost allocations among customers, which Petitioner used to develop its prefiled testimony, and which the PUC staff did not.

M. Questions No. 51-54 and Responses, Page 26, Line 1 Through Page 28, Line 10.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Petitioners’ objections to Austin witness statements regarding Austin Water Utility’s development of wholesale water and wastewater rates is nonsensical to a large extent. Rate setting is, by definition, a predictive exercise, based on the estimates of annual revenues required and wholesale utility services sold. Under PUC Rules, in determining the Cost of Service:

P.U.C. Subst. R. §24.135 (a) The commission shall follow the mandates of the TWC, Chapters 12 and 13, to calculate the annual cost of service. The commission shall rely on any reasonable methodologies set by contract which identify costs of providing service and/or allocate such costs in calculating the cost of service.

Accordingly, it is essential for Austin to set forth the methodology it used to adopt its water and wastewater rates under the Consent Agreements and the Water and Wastewater Rate Settlement Agreements. Under Austin’s theory of this case, these procedures are essential to a determination of whether Austin’s rates are just and reasonable, which Austin believes involves a question of both the procedures used to develop the rates and the actual calculation of Petitioners’ cost of service. While Petitioners would like to limit the Commission’s consideration of this case to dollars and cents only, with no background information or factual bases to be included in the record, under Commission rules, Austin has the right to include information regarding the

methodologies used in developing Petitioners' cost of service. Moreover, under any reasonable reading of the Texas Rules of Evidence and Commission rules at P.U.C. Subst. R, §24.135, any witness is entitled to provide information on the record regarding a determination of utility rates, which will enable the trier of fact to determine whether the witness' testimony is reliable. If the ALJs were to sustain Petitioners' objections, then Austin would be deprived of the opportunity to present necessary information on its rate setting—provided by the City staff, itself—which is the subject of this contested case hearing. Austin will show that it used a reasonable methodology in adopting its Fiscal Year 2013 wholesale water and wastewater rates, and also that it did provide information to all parties regarding the cost allocations among customers, which Petitioner used to develop its prefiled testimony, and which the PUC staff did not.

N. Questions No. 57-58 and Responses, Page 29, Line 12 Through Page 30, Line 14.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities informs his decisions as a manager for AWU.

O. Question No. 59 and Response, Page 30, Line 16 Through Page 31, Line 6.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Petitioners' objections to Austin witness statements regarding Austin Water Utility's development of wholesale water and wastewater rates is nonsensical to a large extent. Rate setting is, by definition, a predictive exercise, based on the estimates of annual revenues required and wholesale utility services sold. Under PUC Rules, in determining the Cost of Service:

P.U.C. Subst. R. §24.135 (a) The commission shall follow the mandates of the TWC, Chapters 12 and 13, to calculate the annual cost of service. The commission shall rely on any reasonable methodologies set by contract which identify costs of providing service and/or allocate such costs in calculating the cost of service.

Accordingly, it is essential for Austin to set forth the methodology it used to adopt its water and wastewater rates under the Consent Agreements and the Water and Wastewater Rate Settlement Agreements. Under Austin's theory of this case, these procedures are essential to a determination

of whether Austin's rates are just and reasonable, which Austin believes involves a question of both the procedures used to develop the rates and the actual calculation of Petitioners' cost of service. While Petitioners would like to limit the Commission's consideration of this case to dollars and cents only, with no background information or factual bases to be included in the record, under Commission rules, Austin has the right to include information regarding the methodologies used in developing Petitioners' cost of service. Moreover, under any reasonable reading of the Texas Rules of Evidence and Commission rules at P.U.C. Subst. R. §24.135, any witness is entitled to provide information on the record regarding a determination of utility rates, which will enable the trier of fact to determine whether the witness' testimony is reliable. If the ALJs were to sustain Petitioners' objections, then Austin would be deprived of the opportunity to present necessary information on its rate setting—provided by the City staff, itself—which is the subject of this contested case hearing. Austin will show that it used a reasonable methodology in adopting its Fiscal Year 2013 wholesale water and wastewater rates, and also that it did provide information to all parties regarding the cost allocations among customers, which Petitioner used to develop its prefiled testimony, and which the PUC staff did not.

P. Questions No. 60-63 and Responses, Page 31, Line 8 Through Page 33, Line 17.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities informs his decisions as a manager for AWU.

Q. Questions No. 71-72 and 79-91 and Responses, Page 36, Line 7-9, Page 39, Line 4-44, and Austin Anders Exhibit No. 10.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Petitioners' objections to Austin witness statements regarding Austin Water Utility's development of wholesale water and wastewater rates is nonsensical to a large extent. Rate setting is, by definition, a predictive exercise, based on the estimates of annual revenues required and wholesale utility services sold. Under PUC Rules, in determining the Cost of Service:

P.U.C. Subst. R. §24.135 (a) The commission shall follow the mandates of the TWC, Chapters 12 and 13, to calculate the annual cost of service. The commission shall rely on any reasonable methodologies set by contract

which identify costs of providing service and/or allocate such costs in calculating the cost of service.

Accordingly, it is essential for Austin to set forth the methodology it used to adopt its water and wastewater rates under the Consent Agreements and the Water and Wastewater Rate Settlement Agreements. Under Austin's theory of this case, these procedures are essential to a determination of whether Austin's rates are just and reasonable, which Austin believes involves a question of both the procedures used to develop the rates and the actual calculation of Petitioners' cost of service. While Petitioners would like to limit the Commission's consideration of this case to dollars and cents only, with no background information or factual bases to be included in the record, under Commission rules, Austin has the right to include information regarding the methodologies used in developing Petitioners' cost of service. Moreover, under any reasonable reading of the Texas Rules of Evidence and Commission rules at P.U.C. Subst. R, §24.135, any witness is entitled to provide information on the record regarding a determination of utility rates, which will enable the trier of fact to determine whether the witness' testimony is reliable. If the ALJs were to sustain Petitioners' objections, then Austin would be deprived of the opportunity to present necessary information on its rate setting—provided by the City staff, itself—which is the subject of this contested case hearing. Austin will show that it used a reasonable methodology in adopting its Fiscal Year 2013 wholesale water and wastewater rates, and also that it did provide information to all parties regarding the cost allocations among customers, which Petitioner used to develop its prefiled testimony, and which the PUC staff did not.

R. Questions No. 92-93 and Responses, Page 44, Line 19 Through Page 45, Line 14.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities applicable to AWU informs his decisions as a manager for AWU.

S. Question No. 94 and Response, Page 45, Line 19 Through Page 46, Line 21.

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following response to Petitioners' specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities applicable to AWU informs his decisions as a manager for AWU.

T. Fund Summary Line Item Description Questions 102 and Responses, Page 51, Line 5 Through Page 51, Line 9.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities applicable to AWU informs his decisions as a manager for AWU.

U. Question No. 104 and Response, Page 52, Line 8 Through 19.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities applicable to AWU informs his decisions as a manager for AWU.

V. Question No. 107 and Response, Page 54, Line 18 Through 27.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities applicable to AWU informs his decisions as a manager for AWU.

W. Question No. 112 and Response, Page 57, Line 7 Through 16.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities applicable to AWU informs his decisions as a manager for AWU.

X. Questions No. 116-117 and Responses, Page 59, Line 9-27 and Page 60, Line 7-13.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities applicable to AWU informs his decisions as a manager for AWU.

Y. Question No. 118 and Response, Page 60, Line 21 Through 25.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities applicable to AWU informs his decisions as a manager for AWU.

Z. Question No. 119 and Response, Page 61, Line 8 Through 12.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities applicable to AWU informs his decisions as a manager for AWU.

AA. Question No. 121 and Response, Page 61, Line 20 Through Page 62, Line 2, and Austin Anders Exhibit No. 3-4.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities applicable to AWU informs his decisions as a manager for AWU.

BB. Questions No. 122-126 and Responses, Page 62, Line 6 Through Page 63, Line 26.

See the “General Response to Petitioners’ Objections” identified above.

CC. Questions No. 127-128 and Responses, Page 64, Line 3 Through 19.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities applicable to AWU informs his decisions as a manager for AWU.

DD. Question No. 129 and Response, Page 64, Line 23 Through Page 65, Line 2.

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following response to Petitioners’ specific objections.

Austin is not attempting to qualify Mr. Anders as an expert. His understanding of the fiscal realities applicable to AWU informs his decisions as a manager for AWU.

**X. RESPONSE TO PETITIONERS' OBJECTIONS TO THE PREFILED
TESTIMONY AND EXHIBITS OF JOSEPH HEALY**

Subject to the "General Response to Petitioners' Objections" identified above, Austin provides the following responses to Petitioners' specific objections outlined below:

A. Procedure

Petitioners' object to Joseph M. Healy's testimony on the basis that he was not identified as an expert on November 8, 2013. Petitioners have no reason to object to the testimony of Mr. Healy, however, because his expertise, the bases of his opinions, the documents he reviewed and his opinions were fully disclosed in his prefiled testimony filed on July 15, 2014, well within the discovery period and sufficient to conform to all notice requirements. Austin updated its Rule 194 disclosures after it completed the submission of its direct case and Rate Filing Package. There is no legitimate basis for Petitioners to object to Mr. Healy's testimony on the basis of their not having knowledge of his expertise opinions, and documents he reviewed.

B. Relevance

Petitioners' object to Mr. Healy's presentation of the results use of the Fiscal Year 2013 Cost of Service Rate Model. Petitioners' fault Mr. Healy for using the actual Fiscal Year 2013 budget numbers which Austin Water Utility relied on in developing its cost of service rates. This objection is nonsensical, especially in the context of all the issues raised in this case. The Excel Spreadsheet is the City of Austin Cost of Service Rate Model, which includes all the budgeted announcements (on which Petitioners' cost of service is based) for each item of Petitioners' cost of service. The amounts of the budgeted items which comprise Austin's cost of water and wastewater service, are included in Austin Healy Exhibit 10, a property authenticated business record of the City of Austin.

It is simply not legitimate to object to Austin's presentation of the validity of its determination of Petitioners' cost of service, based on the use of its cost of service rate models, which were developed and updated with Mr. Healy's assistance.

**XI. RESPONSE TO PETITIONERS' OBJECTIONS TO, MOTION TO STRIKE AND
MOTION TO EXCLUDE THE PREFILED TESTIMONY AND EXHIBITS OF
RICHARD D. GIARDINA**

Subject to the “General Response to Petitioners’ Objections” identified above, Austin provides the following responses to Petitioners’ specific objections outlined below:

A. Inadequate Foundation for Opinion Testimony

Petitioners’ attempt to exclude the prefiled testimony of testifying expert, of Richard D. Giardina, because of the nature of his review of the City of Austin’s Water and Wastewater Cost of Service:

Mr. Giardina states that he has *not undertaken a comprehensive review of all the issues* that may arise as part of the COS study. Mr. Giardina then goes on to state his expert opinions based on his involvement in the 2008 Cost of Service Rate Study, his familiarity with water and wastewater rate setting, and his familiarity with the issues in this case.

Mr. Giardina’s testimony, as an expert on water and wastewater utility finance and the issues in this case, to the extent to which Petitioners have enunciated them, is clearly relevant and material. Mr. Giardina’s testimony does not lack adequate foundation on which to render the expert opinion he gave. Moreover, Petitioners make the existence of the proper foundation obvious when they state, on Page 3 of their objections to Richard D. Giardina’s testimony:

There is no foundation for his opinions beyond the specific opinions he gives.

Mr. Giardina’s testimony gives his educational background, his experience, and his participation in the community of expert rate consultants. Petitioners’ objections, at most, go to the weight rather than the admissibility of his testimony. Mr. Giardina is unquestionably qualified to provide the opinions he provides, which addresses concerns raised by Petitioners as to the determination of their cost of service.

B. Relevance

Finally, once again Petitioners attempt to exclude any information regarding Austin’s rate setting processes and Petitioners’ participation therein. They simply disagree with Austin’s expert’s opinion that both Austin’s cost of service methodology and the inclusion of specific line items of Austin’s annual revenue requirement are essential to a determination of just and reasonable rates. The Commission should have the opportunity to review Mr. Giardina’s direct and rebuttal testimony in determining Petitioners’ cost of service.

Petitioners' disagreement with Mr. Giardina's testimony is without merit under any reasonable evidentiary basis. Accordingly, it is clear that Petitioners' objections to Mr. Giardina's testimony were made solely for the basis of harassment and to waste resources of the City of Austin.

XII. PRAYER


WHEREFORE, the City of Austin prays that the Administrative Law Judges deny the relief requested in the Petitioners' Objections to Prefiled Testimony and Exhibits and overrule all of Petitioners' objections to the prefiled testimony of David Anders, Bart Jennings, Michael Castillo, Richard Giardina, Greg Meszaros, Drema Gross, Joe Healy and Teresa Lutes.

Respectfully submitted,

KAREN KENNARD,
City Attorney

D. CLARK CORNWELL
Assistant City Attorney

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By: 

Gwendolyn Hill Webb
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Stephen P. Webb
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ATTORNEYS FOR CITY OF AUSTIN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via hand delivery, facsimile, electronic mail, overnight mail, US mail and/or Certified Mail Return Receipt Requested on all parties whose names appear on the mailing list below on this 5th day of January, 2015.

FOR THE PUBLIC UTILITY COMMISSION:

1701 N. Congress Avenue, 7th Floor
PO Box 13326
Austin, Texas 78711-3326
Via Electronic Upload

FOR THE ADMINISTRATIVE LAW JUDGES:

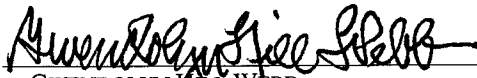
Honorable Pratibha J. Shenoy
Administrative Law Judge

Honorable Beth Bierman
Administrative Law Judge

State Office of Administrative Hearings
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Austin, Texas 78701
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FOR THE SOAH DOCKET CLERK:

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GWENDOLYN HILL WEBB

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