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SOAH DOCKET NO. 473-14-5138.WS

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WATER CONTROL AND
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AND WELLS BRANCH MUNICIPAL
UTILITY DISTRICT FROM THE
RATEMAKING ACTIONS OF THE
CITY OF AUSTIN AND REQUEST FOR
INTERIM RATES IN WILLIAMSON
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ADMINISTRATIVE HEARINGS

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THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**COMMISSION STAFF'S RESPONSE TO THE CITY OF AUSTIN'S MOTION FOR
LEAVE TO DESIGNATE ADDITIONAL EXPERT WITNESSES AND
THE CITY OF AUSTIN'S MOTION TO SEVER RATE CASE EXPENSES**

To the Honorable Beth Bierman, the Honorable Pratibha Shenoy,
Administrative Law Judges:

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files its Response to the City of Austin's request to sever the issue of rate case expenses, request to permit the late designation of expert witnesses, and request to admit the late-filed direct testimony of Matthew Henry.

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I. Staff's Response

A. The City of Austin's late designation of an expert witness and late filing of direct testimony are inexcusable.

The Petitioners initiated this proceeding on April 12, 2013. The City of Austin has had more than sufficient time to locate an expert witness regarding rate case expenses. The City of Austin has had more than one (1) year since the petition date to locate an expert witness and file direct testimony by the July 15, 2014 direct testimony deadline established in SOAH Order No. 9. Instead of promptly searching for a suitable expert witness, the City of Austin had its first discussion with a potential expert on November 13, 2014, nearly four (4) months after the direct testimony deadline. The City of Austin did not locate Matthew Henry until nearly a month later, on December 22, 2014. The City of Austin did not file the direct testimony of Matthew Henry until near a month after that date, on January 30, 2015. Any delay in the City of Austin's late designation and late filing of the direct testimony of Matthew Henry is due to the City of Austin's own failure to promptly search for a suitable expert witness.

B. The City of Austin should not be permitted to recover its rate case expenses because Staff is prejudiced by the City of Austin's late filing.

Staff is tasked by the Commission to review rate case expenses, which includes a thorough review of supporting documentation and a review of the expert testimony regarding rate case expenses. The City of Austin's late filing of the direct testimony of Matthew Henry has prejudiced the Staff's review of rate case expenses in two ways. First, Staff has not been given sufficient time to conduct a review of the rate case expenses sought by the City of Austin. SOAH Order No. 9 established July 15, 2014 as the date for the City of Austin to file its direct testimony. The City of Austin filed the direct testimony of Matthew Henry on January 30, 2015, eighteen (18) days before the scheduled February 17, 2015 hearing on the merits. This late filing has deprived Staff of the opportunity to conduct a review of the City of Austin's supporting documentation and the direct testimony of Matthew Henry. Second, Staff is precluded from conducting any discovery on the rate case expenses sought by the City of Austin. SOAH Order No. 9 established December 30, 2014 as the date by which discovery must be concluded. The City of Austin filed the direct testimony of Matthew Henry after this discovery deadline had passed. Thus, the City of Austin should not be permitted to recover the rate case expenses it

seeks in this proceeding.

C. The late-filed direct testimony of Matthew Henry should be excluded from evidence.

The late-filed direct testimony of Matthew Henry should be excluded from evidence for two reasons. First, the direct testimony of Matthew Henry was filed on January 30, 2015, nearly six (6) months after the July 15, 2014 deadline established in SOAH Order No. 9. Second, the City of Austin did not follow the Commission's procedural rules regarding late-filed testimony. The relevant portion of the Commission's procedural rules states:

Late-filed testimony may be admitted into evidence if the testimony is necessary for a full disclosure of the facts and admission of the testimony into evidence would not be unduly prejudicial to the legal rights of any party. A party that intends to offer late-filed testimony into evidence shall, at the earliest opportunity, inform the presiding officer, who shall establish reasonable procedures and deadlines regarding such testimony.¹

Thus, the late-filed direct testimony of Matthew Henry should be excluded from evidence because of the City of Austin's failure to follow SOAH Order No. 9 and the Commission's procedural rules.

D. Staff supports the request to sever out the issue of rate case expenses.

Subject to any ruling on whether the City of Austin is entitled to rate case expenses, Staff supports the City of Austin's request to sever out the issue of rate case expenses. In the event that the issue of rate case expenses is severed out from this proceeding, Staff requests that it be permitted to conduct discovery and file direct testimony regarding the rate case expenses sought by the City of Austin. Otherwise, Staff will be precluded from fulfilling its Commission-directed task to review rate case expenses.

II. Conclusion

The City of Austin has not provided sufficient reasons to excuse the late designation of Matthew Henry as an expert and the late filing of the direct testimony of Matthew Henry. Thus, it is Staff's position that the City of Austin should not be permitted to recover rate case expenses.

¹ 16 Tex. Admin. Code § 22.225(a)(10) (Public Utility Comm'n, Written Testimony and Accompanying Exhibits).

Additionally, it is Staff's position that the direct testimony of Matthew Henry should be excluded from evidence.

However, subject to any ruling on whether the City of Austin is entitled to rate case expense, Staff does support the City of Austin's request to sever the issue of rate case expenses. Staff requests that it be permitted to conduct discovery and file direct testimony on the rate case expenses sought by the City of Austin.

Date: February 19, 2015

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on February 19, 2015, in accordance with P.U.C. PROC. R. 22.74.

Sam Chang w/permission
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