



Control Number: 42867



Item Number: 40

Addendum StartPage: 0

SOAH DOCKET NO. 473-14-5138
PUC DOCKET NO. 42857

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PETITION OF NORTH AUSTIN
UTILITY DISTRICT NO. 1,
NORTHTOWN MUNICIPAL UTILITY
DISTRICT, TRAVIS COUNTY WATER
CONTROL AND IMPROVEMENT
DISTRICT NO. 10 AND WELLS
BRANCH MUNICIPAL UTILITY
DISTRICT, FROM THE RATEMAKING
ACTIONS OF THE CITY OF AUSTIN
AND REQUEST FOR INTERIM RATES
IN WILLIAMSON AND TRAVIS
COUNTIES

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 473-14-5138
PUC DOCKET NO. 42867

PETITION OF NORTH AUSTIN
MUNICIPAL UTILITY DISTRICT NO.
1, NORTHTOWN MUNICIPAL
UTILITY DISTRICT, AND WELLS
BRANCH MUNICIPAL UTILITY
DISTRICT FROM THE RATEMAKING
ACTIONS OF THE CITY OF AUSTIN
AND REQUEST FOR INTERIM RATES
IN WILLIAMSON AND TRAVIS
COUNTIES

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

CITY OF AUSTIN'S REPLY TO PETITIONERS' MOTION TO COMPEL

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW, the City of Austin ("Austin" or the "City"), by and through its attorneys Webb & Webb, Attorneys at Law, and files this, its Reply to Petitioners' Motion to Compel filed today, Tuesday, September 16, 2014. In support thereof, Austin would respectfully show as follows:

I. INTRODUCTION AND BACKGROUND

1. On October 11, 2013, Administrative Law Judge (“ALJ”) Pratibha J. Shenoy of the State Office of Administrative Hearings (“SOAH”) issued Order No. 4, Memorizing Second Prehearing Conference and Adopting Proposed Hearing Schedule, ordering that the cost of service discovery period begin on November 8, 2013.

2. On December 6, 2014, Petitioners propounded Petitioners’ First Request for Production to the City of Austin. The City timely responded and filed City of Austin’s Responses to Requests for Production Propounded by Petitioners on February 14, 2014 by agreement with Petitioners; Austin supplemented its responses on March 3, 2014, March 10, 2014, March 19, 2014, April 3, 2014, April 22, 2014, April 24, 2014 and August 6, 2014.

3. On March 3, 2014, the City propounded its First Request for Production of Documents and First Set of Interrogatories to Petitioners. Petitioners filed their discovery responses on April 2, 2014. Petitioners’ objected to each request for production and interrogatory; and provided no documents or substantive responses other than objections.

4. On May 29, 2014, the Honorable Pratibha J. Shenoy, ALJ, issued Order No. 9, Memorializing First Joint Prehearing Conference, Consolidating Cases, Adopting Prehearing and Hearing Schedule, Setting Interim Water Rates, and Granting City’s Motion to Compel; changing the cost of service discovery schedule to include two “quiet periods,” the first beginning September 6, 2014 for 30-days, in which no discovery is to be propounded on Petitioners and no discovery responses are required. The second “quiet period” is ordered to begin on November 12, 2014 for 30-days, in which no discovery is to be propounded on the Executive Director (“ED”) and no discovery responses are required.

5. On June 17, 2014 the undersigned had a telephone conference with John Carlton, attorney for Petitioners, to discuss continuing disagreement between the parties regarding the number of interrogatories and other matters not resolved by the ALJ’s Order No. 9. The conference was initiated by the undersigned counsel for the City of Austin so that the parties could, in good faith, resolve the remaining discovery disputes. Counsel for Austin stated that a

draft of the amended discovery request would be forwarded to Mr. Carlton following the telephone conference, to ensure that the draft reflected the parties' potential agreement on the amendments to Austin's discovery requests.

6. On June 18, 2014 the City emailed "draft" amended discovery requests to Petitioners.

7. Following June 18, 2014, the undersigned counsel for Austin made several telephone calls to Mr. Carlton's office that were not answered by Mr. Carlton, or returned, to discuss the draft discovery requests. When the undersigned received no response from Mr. Carlton, he made several telephone calls to Petitioners' attorney Randy Wilburn. He was able to speak to Mr. Wilburn to discuss Austin's amended discovery requests, the difficulty in reaching Mr. Carlton, and the chances that Austin would receive responses to the amended requests. Mr. Wilburn stated that Petitioners would not be providing any responses to Austin's amended March 3, 2014 discovery requests prior to July 15, 2014.

8. On July 22, 2014 Petitioners filed Petitioners' Second Request for Production of Documents to the City of Austin.

9. On July 23, 2014 the City propounded its Amended First Request for Production of Documents and Amended First Interrogatories to Petitioners.

10. On August 12, 2014, the City timely responded and filed City of Austin's Objections and Responses to Petitioners' Second Request for Production. On that same date, Petitioners provided responses to the City's amended discovery requests; however, Petitioners once again did not provide any documents, simply stating "...responsive documents will be produced."

11. On August 14, 2014 Petitioners filed Petitioners' Third Request for Production to the City of Austin.

12. On August 14, 2014, Petitioners also provided a Compact Disc with responsive discovery documents to Austin's amended discovery requests.

II. DISCUSSION

Austin's position regarding its deadline to respond to Petitioner's Third Request for Production to the City of Austin is entirely consistent with the ALJ's Order No. 9. The ALJ's order regarding the so-called "Quiet Period"-- which is an ordered exception to parties' discovery obligations that is outside of the applicable rules for discovery responses in Texas Administrative Code §155.251(c)(1) and (c)(3) and Tex. R. Civ. P. 193.1 and 193.2(e)-- states that during such period *no answers [are] required*. The order does *not* state that the parties who are developing their pre-filed testimony are the only parties who are allowed not to file responses to discovery requests. Moreover, during the discussion of the "Quiet Period" which occurred at the May 14, 2014 Prehearing Conference, the ALJ stated the following:

"Petitioner's and OPIC will prefile their direct case on -- on October 6, 2014. Prior to that filing -- so beginning September 6, 2014, there will be a quiet period, which the parties have explained *their understanding is that no discovery will be provided; no answers are due.*"

Transcript of May 14, 2014 Prehearing Conference, pg. 39
[Attached to this pleading as Exhibit No. 1]

Contrary to Petitioners' counsel's representation in his September 11, 2014 letter to Austin's counsel [Attachment C to Petitioners' Motion] Austin does not assert that there is an "agreement" between the parties that Austin delay its responses to Petitioners' discovery requests. In fact, Austin has already responded timely to Petitioners' voluminous, Petitioners' Second Request for Production to the City of Austin, and provided hundreds of pages of documents to the Petitioners *before* the application of the ordered "Quiet Period."

It is Petitioners who seem to argue a one-sided and inaccurate account of the ALJ's rulings regarding discovery responses. At page four of its Motion, Petitioners make the following extraordinary statement:

“Moreover, the City is the party with all of the relevant information regarding whether its costs are reasonable and necessary. *This very fact was the reason why the ALJ had the City file its written direct testimony prior to any discovery.*”

This statement is entirely inconsistent with Order No. 9, wherein the ALJ ruled that Austin is entitled to answers to its discovery requests served on Petitioners on *March 3, 2014*. The ALJ further stated that the parties would “strive in good faith to resolve that matter so that Petitioners can file discovery responses *“promptly.”*

It was in the spirit of good faith that the undersigned counsel contacted Petitioners’ counsel, John Carlton, on June 17, 2014 to discuss amending the discovery requests, consistent with the ALJ’s May 29, 2014 ruling granting Austin’s Motion to Compel. During the telephone conference it was agreed that Austin would circulate a draft of the amended discovery requests to the Petitioners to rule out misunderstandings that could have occurred during the June 17, 2014 telephone conference, and the parties would agree to a date that the Petitioners would respond to the discovery requests they had already been ordered by the ALJ to provide. On June 18, 2014 the undersigned counsel forwarded the amended requests to Petitioners’ counsel, John Carlton and proceeded to make multiple telephone calls to see *if* the draft requests were consistent with the June 17, 2014 discussions. [See Exhibit No. 2 to this pleading] *None of these telephone conferences were accepted by Mr. Carlton or returned.* In fact, the undersigned counsel has not spoken to Mr. Carlton since June 17, 2014. Then, the undersigned attempted to contact Petitioners’ counsel Randy Wilburn and did receive a returned telephone call after multiple attempts. During the telephone conference with Mr. Wilburn, he advised the undersigned that the Petitioners’ did not intend to provide any discovery responses to Austin prior to July 15, 2014, the date that Austin’s prefiled testimony was due. Rather than engage in an argument with Mr. Wilburn, Austin’s counsel elected to resume work on Austin’s prefiled testimony without any discovery answers that the ALJ had ordered were appropriate. [See Exhibit No. 3 to this pleading, the Affidavit of Stephen P. Webb]

If any party is guilty of “stone walling” it would be Petitioners and their counsel. Austin has no problem with providing information that is reasonably calculated to lead to the discovery

of admissible evidence. However, Austin will not stand for abusive and unfair discovery practices that are designed to put Austin at a disadvantage in this case simply because Austin has the burden of proof in this case. Petitioners' argument that they are not bound to respond because Austin has the burden of proof has been rejected by the ALJ, who stated:

"The ALJ finds that the City's requests are potentially relevant to the ultimate issue of what is a 'just and reasonable' rate, particularly since that standard is not explicitly defined by the applicable status or rules. Even if Petitioners' budgeting, for example, is for retail services provided to its customers, the method and process of budgeting may yield information relevant to what is a 'just and reasonable' method of developing a budget by a water utility. It has not been shown to be overly burdensome to Petitioners to provide the requested types of information."

Regarding Footnote 11 in the ALJ's Order No. 9, cited by Petitioners, there was no "Quiet Period" prescribed for the benefit of Austin, however, the schedule provides for Austin to file its *Rebuttal Case* on January 30, 2015. Because Order No. 9 only provides for a "Quiet Period" prior to the filing of a *direct case*, it is assumed that the ALJ has advised Austin to request a quiet period prior to its prefiled testimony for its rebuttal case is developed, if it desires one.

The Administrative Law Judges have advised the parties that the procedural rules of the PUC now apply to this contested case hearing. In anticipation of the transfer of jurisdiction, the parties agreed that a 20 days period would apply to discovery responses after July 15, 2014. That response period allowed Petitioners two rounds of discovery requests in the time period following Austin's filing of its prefiled testimony. PUC Rules at 16 TAC §22.4(b) state that extensions should only be granted if the request is filed before the time runs, and also if the extension is not needed simply because of lack of diligence. Petitioners' reading of Order No. 9 as a means of withholding discovery from Austin indicates that their failure to propound discovery on Austin within the 20 day timeline before the quiet period was no more than lack of due diligence on their parts. Moreover, PUC Rules at 16 TAC §22.5(b) state that extensions should only be granted for good cause and if doing so would not prejudice the rights of any party. Austin staff and consultants arranged their schedules so as to comply with Order No. 9, and so as not to be unduly burdened with discovery during the ordered Quiet Period, which

includes the time for Austin's adoption and implementation of its Fiscal Year 2015 budget. Therefore, to require a change in schedule to force preparation of responses to Petitioners' late filed discovery, to extend the time for Petitioners to file written discovery requests on Austin, and to grant Petitioners' Motion to Compel goes against Order No. 9 and PUC Rules and prejudices Austin.

III. SUMMARY AND CONCLUSION

Under the plain terms of Order No. 9 (including the stated interpretation by Petitioners' counsel who refused to provide any discovery responses ordered by the ALJ until after the City prefiled its direct case), the City of Austin's objections and responses to Petitioners' Third Request for Production to the City of Austin are due on October 7, 2014. Austin has not waived any objections to such discovery requests and Petitioners are not entitled to delay the completion of their direct case from October 6, 2014, as ordered in Order No. 9. Petitioners' Motion to Compel Discovery Responses should be denied as should Petitioners' Request for an extension of time to file their direct case.

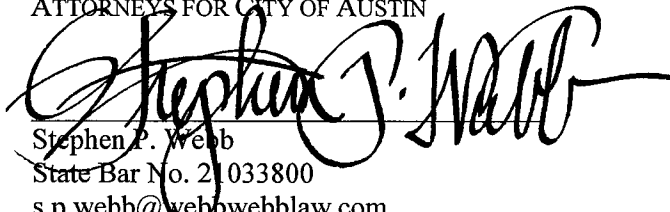
Respectfully submitted,

KAREN KENNARD,
City Attorney

D. CLARK CORNWELL
Assistant City Attorney

WEBB & WEBB
712 Southwest Tower
211 East Seventh Street
Austin, Texas 78767
Tel: (512) 472-9990
Fax: (512) 472-3183
ATTORNEYS FOR CITY OF AUSTIN

By:


Stephen P. Webb
State Bar No. 21033800
s.p.webb@webbwebblaw.com

Gwendolyn Hill Webb
State Bar No. 21026300
g.hill.webb@webbwebblaw.com

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 16th day of September, 2014.

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
300 W. 15th Street, Suite 504
Austin, Texas 78701
Phone: 512-475-4993
Fax: 512-322-2061
Via Electronic Upload

FOR THE SOAH DOCKET CLERK:

Ms. Monica Luna, Docketing Clerk
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701
Phone: 512-475-4993
Fax: 512-322-2061
Via Electronic Upload

FOR PETITIONERS:

Mr. Randall B. Wilburn, Attorney at Law
3000 South IH 35, Suite 150
Austin, Texas 78704
Phone: 512-535-1661
Fax: 512-535-1678
rbw@randallwilburnlaw.com

Mr. John Carlton, Attorney at Law
The Carlton Law Firm, PLLC
2705 Bee Cave Road, Suite 200
Austin, Texas 78746
Phone: 512-614-0901
Fax: 512-900-2855
john@carltonlawaustin.com

FOR THE PUC STAFF:

Mr. Hollis Henley, Attorney-Legal Division
Public Utility Commission of Texas
1701 N. Congress Avenue
PO Box 13326
Austin, Texas 78711-3326
Phone: 512-936-7230
Fax: 512-936-7268
Hollis.henley@puc.texas.gov


STEPHEN P. WEBB

SOAH DOCKET NO. 582-13-4617
TCEQ DOCKET NO. 2013-0865-UCR

PETITION OF NORTH AUSTIN) STATE OFFICE OF
UTILITY DISTRICT NO. 1,)
NORTHTOWN MUNICIPAL)
UTILITY DISTRICT, TRAVIS)
COUNTY WATER CONTROL AND)
IMPROVEMENT DISTRICT NO.)
10 AND WELLS 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

SOAH DOCKET NO. 582-14-3145
TCEQ DOCKET NO. 2014-0489-UCR

PETITION OF NORTH AUSTIN) STATE OFFICE OF
MUNICIPAL UTILITY)
DISTRICT NO. 1, NORTHTOWN)
MUNICIPAL UTILITY)
DISTRICT, AND WELLS 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

TRANSCRIPTION OF PREHEARING CONFERENCE

FROM AUDIO RECORDING

Wednesday, May 14, 2014



1 those -- those can be cleared. I mean, this case will
2 take precedence, and we'll -- we'll make it happen.
3 Yeah. I think that's true of all the potential
4 conflicts on -- on my calendar. So we'll -- we -- I'll
5 work around what the parties can agree to on that.

6 All right. So let's go off the record.

7 I'm sorry?

8 UNIDENTIFIED SPEAKER: Should we call you,
9 or do you want to come back?

10 JUDGE SHENOY: If you can call, that would
11 be great.

12 UNIDENTIFIED SPEAKER: What's the number?

13 (Discussion off the record)

14 JUDGE SHENOY: All right. We are back on
15 the record at about 12:25. The parties have presented a
16 proposed hearing schedule for the water and wastewater
17 rate appeals. The cases will be consolidated, as I
18 discussed earlier, and that'll be memorialized in the
19 next order which will come out probably in about a week.
20 And that order will also include a ruling on the motion
21 to compel and state the interim rates ruling. So it
22 wouldn't go into effect until the -- the order comes
23 out, but I -- I wanted to state my order on the record
24 earlier.

25 So let me just read these dates into the

1 record so that we're clear. The schedule is going to be
2 as follows: The City will file its rate package on
3 July 15th, 2014. Discovery will open on that date,
4 according to the parties. If there's anything else
5 going on in between now and that date, that is subject
6 to the agreement of the parties. I'm not going to be
7 involved in that. But the parties have said that
8 after -- on and after July 15th, 2014, they wish the
9 20-day response rule to be in effect, so I will
10 stipulate that in -- in the -- include that in the
11 order. And City will also prefile its direct case on
12 that date, July 15th, 2014.

13 Petitioners and OPUC will prefile their
14 direct case on -- on October 6th, 2014. Prior to that
15 filing -- so beginning September 6, 2014, there will be
16 a quiet period, which the parties have explained their
17 understanding is that no discovery will be provided; no
18 answers are due.

19 The ED will prefile their direct case on
20 December 12th, 2014. The same quiet period will apply
21 from November 12th, 2014.

22 Objections to prefiled direct cases are
23 due December 22nd, 2014. Discovery closes
24 December 30th, 2014. Responses are due January 5th,
25 2015. City will prefile its rebuttal case January 30th,

1 2015. Objections are due to the prefiled rebuttal on
2 February 6th, 2015. And responses are due on
3 February 10th, 2015, and that is also the date on which
4 there will be a prehearing conference.

5 The hearing on the merits will be held
6 February 12th through February 25th, 2015. And unless
7 for some reason it's decided that it needs to be held in
8 some other location, it'll be held here at SOAH's
9 offices.

10 Have I missed anything? Yes.

11 MS. WEBB: There is an error on the -- on
12 the schedule. The -- no, there isn't. No, there isn't.
13 I'm sorry.

14 JUDGE SHENOY: Okay. But -- so I've read
15 the dates into the record, and I will memorialize all of
16 this in my order. If there's any error that I've
17 captured in -- in this, I'll expect the parties to let
18 me know.

19 MR. ARTHUR: Judge, I would like to
20 clarify one thing. Regarding the OPUC prefiled --
21 prefiling a direct case, I -- I just want to note that
22 is -- that's a different office than mine, under the
23 Public Utility Commission. I have no idea whether they
24 will be prefiling a direct case, but that does appear to
25 be the appropriate time if they are going to do that. I

C E R T I F I C A T E

STATE OF TEXAS)

COUNTY OF TRAVIS)

I, Lorrie A. Schnoor, Certified Shorthand Reporter in and for the State of Texas, Registered Merit Reporter and Texas Certified Realtime Reporter, do hereby certify that the foregoing is a correct transcription, to the best of my ability, from the audio recording of the proceedings in the above-entitled matter.

I FURTHER CERTIFY THAT I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 16th day of June, 2014.



LORRIE A. SCHNOOR, RMR, CRR, TCRR
Certified Shorthand Reporter
CSR No. 4642 - Expires 12/31/15

Firm Registration No. 276
Kennedy Reporting Service, Inc.
7800 North Mopac, Suite 120
Austin, Texas 78759
512.474.2233

Casey Powell

From: Casey Powell
Sent: Wednesday, June 18, 2014 4:19 PM
To: 'john@carltonlawaustin.com'; 'rbw@randallwilburnlaw.com'
Cc: Stephen Webb; Gwen Webb
Subject: DRAFT Discovery
Attachments: 2014.06.18.Interrogs 1st Amend- North Austin.docx; 2014.06.18.RPD AmendNorth Austin.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Mr. Carlton—Per your telephone conversation with Mr. Webb this afternoon, attached please find the amended discovery requests that have been watermarked “Draft.” If you are unable to open these attachments, please let me know.

Casey Powell

Paralegal and Office Manager
Webb & Webb, Attorneys at Law
211 East Seventh Street, Suite 712
Austin, Texas 78701
Phone: 512-472-9990
Fax: 512-472-3183



SOAH DOCKET NO. 582-13-4617
TCEQ DOCKET NO. 2013-0865-UCR

PETITION OF NORTH AUSTIN UTILITY DISTRICT NO. 1, NORTHTOWN MUNICIPAL UTILITY DISTRICT, TRAVIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 10 AND WELLS BRANCH MUNICIPAL UTILITY DISTRICT ("PETITIONERS"), FROM THE RATEMAKING ACTIONS OF THE CITY OF AUSTIN ("CITY") AND REQUEST FOR INTERIM RATES IN WILLIAMSON AND TRAVIS COUNTIES § BEFORE THE STATE OFFICE §
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§ OF §
§
§ ADMINISTRATIVE HEARINGS §

CITY OF AUSTIN'S AMENDED FIRST SET OF INTERROGATORIES
PROPOUNDED TO NORTH AUSTIN UTILITY DISTRICT NO. 1

TO: North Austin Utility District No. 1, care of Randall B. Wilburn, Attorney at Law, 3000 South I.H. 35, Suite 150, Austin, Texas 78704, Phone 512-535-1661, Fax 512-535-1678; and

North Austin Utility District No. 1, care of John Carlton, The Carlton Law Firm, P.L.L.C., 2705 Bee Cave Road, Suite 200, Austin, Texas 78746, Phone 512-614-0901, Fax 512-900-2855

The City of Austin ("the City," "Austin," or "Respondent") serves this Amended First Set of Interrogatories Propounded to North Austin Utility District No. 1 ("North Austin" or "Petitioner"), as allowed by Texas Rules of Civil Procedure 197. North Austin must answer the following interrogatories, in writing, within 30 days after service.

This document reflects the ruling of the Administrative Law Judge in Order No. 9 and a conference with Petitioners' counsel on April 29, 2014. These interrogatories are a re-issuance of the interrogatory requests propounded to Plaintiff on March 3, 2014.

Respectfully submitted,

KAREN KENNARD,
City Attorney

D. CLARK CORNWELL
Assistant City Attorney

WEBB & WEBB
712 Southwest Tower
211 East Seventh Street
Austin, Texas 78767
Tel: (512) 472-9990
Fax: (512) 472-3183

By:

Stephen P. Webb
State Bar No. 21033800
s.p.webb@webbwebblaw.com

Gwendolyn Hill Webb
State Bar No. 21026300
g.hill.webb@webbwebblaw.com

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, U.S. mail and/or Certified Mail Return Receipt Requested on all parties whose names appear on the attached mailing list on this the _____ day of _____, 2014.

FOR JUDGE SHENOY:

Honorable Pratibha J. Shenoy
Administrative Law Judge
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701
Phone: 512-475-4993
Fax: 512-322-2061
via Electronic Upload

FOR THE SOAH DOCKET CLERK:

Ms. Monica Luna, Docketing Clerk
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701
Phone: 512-475-4993
Fax: 512-322-2061
via Electronic Upload

FOR THE TCEQ CHIEF CLERK:

Ms. Bridget Bohac, Chief Clerk
MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Phone: 512-239-3300
Fax: 512-239-3311
Via Electronic Upload

FOR PETITIONERS:

Mr. Randall B. Wilburn, Attorney at Law
3000 South I.H. 35, Suite 150
Austin, Texas 78704
Phone: 512-535-1661
Fax: 512-535-1678
rbw@randallwillburnlaw.com

Mr. John Carlton, Attorney at Law
The Carlton Law Firm, P.L.L.C.
2705 Bee Cave Road, Suite 200
Austin, Texas 78746
Phone: 512-614-0901
Fax: 512-900-2855
john@carltonlawaustin.com

FOR THE OPIC:

Mr. Garrett Arthur, Attorney at Law
MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Phone: 512-239-6363
Fax: 512-239-6377
Garrett.arthur@tceq.texas.gov

FOR THE TCEQ EXECUTIVE DIRECTOR:

Mr. Ron Olson, Staff Attorney
Environmental Law Division, MC-173
Texas Commission on Environmental Quality
PO Box 13087
Austin, Texas 78711-3087

STEPHEN P. WEBB

Phone: 512-239-0608
Fax: 512-239-0606
Ron.olson@tceq.texas.gov

I. INSTRUCTIONS

These interrogatories are served pursuant to the Texas Rules of Civil Procedure, and shall be answered under oath within thirty (30) days after the date of service. In answering these interrogatories, you are required to furnish all non-privileged information that is available or subject to reasonable inquiry by you, your attorneys, officers, agents, advisors, experts, or other persons directly or indirectly in your employment or control. If these interrogatories cannot be answered in full, you are required to answer them to the extent possible, and specify the reason for your inability to answer the remainder.

Pursuant to Texas Rules of Civil Procedure 197, your duty to answer these interrogatories is ongoing. You are required by law to seasonably supplement or correct your responses with new information, whenever appropriate.

Each interrogatory herein is followed by space for your answer. You must answer in the space provided, or, if the provided space is insufficient for your answer, you must set forth each interrogatory immediately preceding your answer to it. Where the answer to an interrogatory may be derived or ascertained from business records or other documents in your possession, in lieu of a written answer to the interrogatory, you may submit the document itself, pursuant to Texas Rules of Civil Procedure.

The singular shall be deemed to include the plural and vice versa so as to bring within the scope of this request all documents which might otherwise be construed to be outside the scope.

Each interrogatory to which no objection is interposed shall be answered separately and fully in writing, and under oath. If any response is withheld under a claim of privilege, please provide the following information with respect to any such response so as to aid the Court and the parties hereto in determining the validity of the claim of privilege, objection or other protection:

- a. The identity and job title of the person(s) who prepared the response;
- b. The basis on which any privilege or other protection is claimed; and
- c. The statute, rule, or decision, which is claimed to give rise to the privilege.

In responding to each interrogatory state whether the information furnished is within the personal knowledge of the person answering and, if not, the name of each person to whom the information is a matter of personal knowledge.

If you maintain that any document or record which refers or relates to anything about which these interrogatories ask has been destroyed, set forth the contents of said document, the location of any copies of said document, the date of such destruction and whether or not the destruction was intentional or accidental. If intentional, state the name of the person who ordered or authorized the destruction.

II. DEFINITIONS

The following definitions shall have the following meanings, unless the context provides otherwise:

1. "North Austin Utility District No. 1" or "North Austin" means Petitioner, its agents, representatives, and all other persons acting in concert with it, or under its control, whether directly or indirectly, including any attorney.

2. "Austin" or "the City" means the City of Austin, Texas, its agents, representatives, and all other persons acting in concert with it, or under its control, whether directly or indirectly, including any attorney.

3. "You" or "your" means the North Austin Utility District No. 1, its successors, predecessors, divisions, subsidiaries, present and former officers, agents, employees, consultants, and all other persons acting on behalf of North Austin, including successors, predecessors, divisions, and subsidiaries.

6. The term "document" is used in its broadest sense to mean all writings or records of any kind, including but not limited to the original, any drafts, and all non-identical copies (whether different from originals by reason of notation made on such copies or otherwise) of all correspondence, letters, emails, memoranda, telegrams, diaries, appointment calendars, books, reports, records, handwritten notes, working papers, statements, journals, worksheets, charts, plans, diagrams, sketches, brochures, pamphlets, manuals, newspapers, magazines, bulletins, circulars, contracts, proposals, written agreements, interoffice communications, photographs, pictures, slides, films, microfilm, voice recordings, tapes, videotapes, computer input and output material, electronic data and other writings or communications of any kind or description

whatsoever, in the possession, custody or control of North Austin, its attorneys, officers, employees and/or agents.

7. "Relating to" means consisting of, referring to, reflecting, containing, discussing, describing, evidencing, substantiating, memorializing, prepared in connection with, used in preparation for, pertaining to, having any relationship to, or in any way being factually, legally, or logically connected to, in whole or in part, the stated subject matter. "Relating to" also means, without limitation, embodying, mentioning or concerning, directly or indirectly, the subject matter identified in the request.

8. "Possession, custody, or control" of an item means that the person either has physical possession of the item or has a right to possession that is equal or superior to the person who has physical possession of the item.

9. "File" means any collection or group of documents maintained, held, stored, or used together, including, without limitation, all collections of documents maintained, held or stored in folders, notebooks, or other devices for separating or organizing documents.

10. "Person" means any natural person, corporation, firm association, partnership, joint venture, proprietorship, governmental body, or any other organization, business, or legal entity, and all predecessors or successors in interest.

11. "Concerning" means, in whole or in part, directly or indirectly, referring to, relating to, connected with, commenting on, responding to, showing, describing, analyzing, reflecting, and constituting.

12. "Communication" means any oral or written communication of which North Austin has knowledge, information, or belief.

13. "Date" means the exact date, month, year, if ascertainable, or, if not, the best available approximation.

14. "Describe" and "identify," when referring to a person, are defined to required that you state the following:

- a. The full name;
- b. The present or last known residential address;
- c. The present of last known residential and office telephone numbers;

- d. The present occupation, job title, employer, and employer's address at the time of the event or period referred to in each particular request; and
- e. In the case of any person other than an individual, identify the officer, employee, or agent most closely connected with the subject matter of the request and identify the officer who is responsible for supervising that officer or employee.

15. "Describe" and "identify," when referring to a document, are defined to require that you state the following:

- a. The nature (e.g., letter, handwritten note) of the document;
- b. The title or heading that appears on the document;
- c. The date of the documents and the date of each addendum, supplement, or other addition or change;
- d. The identity of the author and of the signor of the document, and of the person on whose behalf or at whose request or direction the document was prepared or delivered; and
- e. The present location of the document, and the name, address, position, or title, and telephone number of the person or person having custody of the document.

16. The word "and" means "and/or."

17. The word "or" means "or/and."

III. REQUESTS FOR INTERROGATORIES

1. For the current year and past five (5) years, please describe, with specificity, North Austin's method for allocating each year's overall operating expenses into various categories of services that are provided by North Austin. Please explain the rationale and percentage basis for assigning each expense to water.

Answer:

2. For the current year and past five (5) years, please describe, with specificity, North Austin's method for allocating each year's overall capital expenses into various categories of services that are provided by North Austin. Please explain the rationale and percentage basis for assigning each expense to water.

Answer:

3. Please describe, with specificity, how North Austin non-utility services are fully excluded from water or sewer costs.

Answer:

4. Please describe how often detailed water rate studies are performed that explicitly address direct and common cost allocations between the various North Austin service functions and water.

Answer:

5. Please describe, in detail, the methodology by which your District's water and sewer rates are adjusted in the intervening years between detailed rate studies.

Answer:

6. Please describe, with specificity, what facilities owner by the City of Austin do you use to comply with the Texas Commission on Environmental Quality's ("TCEQ") 0.6 gpm water delivery and gals/fire and reliability connection water storage requirements.

Answer:

7. Please list all water capital items (>\$10k) funded over the last five (5) years and the source of funds (cash or debt) used to pay for each project.

Answer:

8. Please provide the percent of your annual water revenue requirement for water capital facilities that are funded through available reserves.

Answer:

VERIFICATION

I, _____, a duly authorized representative of North Austin Utility District No. 1, states that I have read the foregoing Answers to Interrogatories, and that they are true and correct as I verily believe.

Date: _____

Signature: _____

Title: _____

SOAH DOCKET NO. 582-13-4617

TCEQ DOCKET NO. 2013-0865-UCR

PETITION OF NORTH AUSTIN UTILITY DISTRICT NO. 1, NORTHTOWN MUNICIPAL UTILITY DISTRICT, TRAVIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 10 AND WELLS BRANCH MUNICIPAL UTILITY DISTRICT (“PETITIONERS”), FROM THE RATEMAKING ACTIONS OF THE CITY OF AUSTIN (“CITY”) AND REQUEST FOR INTERIM RATES IN WILLIAMSON AND TRAVIS COUNTIES

§ BEFORE THE STATE OFFICE
§
§
§
§
§ OF
§
§
§
§
§ ADMINISTRATIVE HEARING
§

CITY OF AUSTIN'S AMENDED FIRST REQUEST FOR PRODUCTION OF DOCUMENTS PROPOUNDED TO NORTH AUSTIN UTILITY DISTRICT NO. 1

TO: North Austin Utility District No. 1, care of Randall B. Wilburn, Attorney at Law, 3000 South I.H. 35, Suite 150, Austin, Texas 78704, Phone 512-535-1661, Fax 512-535-1678; and

North Austin Utility District No. 1, care of John Carlton, The Carlton Law Firm,
P.L.L.C., 2705 Bee Cave Road, Suite 200, Austin, Texas 78746, Phone 512-614-0901,
Fax 512-900-2855

The City of Austin (“the City,” “Austin,” or “Respondent”), serves this Amended Request for Production of Documents on Petitioner, North Austin Utility District No. 1 (“North Austin” or “Petitioner”), as allowed by Texas Rules of Civil Procedure 196. North Austin must respond to the following requests, in writing, within 30 days after service. North Austin must produce all requested documents (as they are kept in the ordinary course of business or organized and labeled to correspond with categories in each request) for inspection and copying, nor more than 30 days after the service of this request.

This Request for Production is continuing in nature. If further or different information is made available to the party upon whom this Request is made, such information is to be made available at the office of the City of Austin's attorneys during usual business hours within a reasonable time after North Austin receives the information.

This document reflects the ruling of the Administrative Law Judge in Order No. 9 and a conference with Petitioners' counsel on April 29, 2014. These production requests are a re-issuance of the production requests propounded to Plaintiff on March 3, 2014.

I. INSTRUCTIONS

1. Answer each request for documents by separately listing the documents and by describing them as defined below. If a document already has been provided in response to a previous document request, the subsequent response need simply identify such document.

2. The singular shall be deemed to include the plural and vice versa so as to bring within the scope of this request all documents which might otherwise be construed to be outside the scope.

3. If any document is withheld under a claim of privilege, provide the following information with respect to any such document so as to aid in determining the validity of the claim of privilege:

- a. The identity of the person(s): (i) who prepared the document; (ii) who signed the document, and (iii) over whose name it was sent or issued;
- b. The identity of the person(s) to whom the document was directed;
- c. The identity of the person(s) who has custody of, or control over, the document and each copy thereof;
- d. The identity of each person to whom a copy of the document was furnished;
- e. The job title(s) of each person named in (a) (b), (c) and (d) above;
- f. The nature and substance of the document, with sufficient particularity to enable the Court and the parties to identify the document;
- g. The date of the document; the number of pages of the document;
- h. The basis on which any privilege is claimed, including the statute, rule, or decision, which is claimed to give rise to the privilege.
- i. Whether any non-privileged matter is included in the document; and

4. In the case of any document relating in any way to a meeting or conversation, provide the date and place of such meeting or conversation and a list of the participants thereto.

5. For a document that no longer exists or that cannot be located, identify the document; state how and when it passed out of existence, or when it could no longer be located, and the reasons for the disappearance. Also, identify each person having knowledge about the disposition or loss of the document, and identify any other document evidencing the lost document's existence or any facts about the lost document.

6. North Austin should supplement as soon as possible the responses to these requests as additional documents become available or come into existence.

II. DEFINITIONS

The following definitions shall have the following meanings, unless the context provides otherwise:

1. "North Austin Utility District No. 1" or "North Austin" means Petitioner, its agents, representatives, and all other persons acting in concert with it, or under its control, whether directly or indirectly, including any attorney.

2. "Austin" or "the City" means the City of Austin, Texas, its agents, representatives, and all other persons acting in concert with it, or under its control, whether directly or indirectly, including any attorney.

3. "You" or "your" means the North Austin Utility District No. 1, its successors, predecessors, divisions, subsidiaries, present and former officers, agents, employees, consultants, and all other persons acting on behalf of North Austin, including successors, predecessors, divisions, and subsidiaries.

4. The term "document" is used in its broadest sense to mean all writings or records of any kind, including but not limited to the original, any drafts, and all non-identical copies (whether different from originals by reason of notation made on such copies or otherwise) of all correspondence, letters, emails, memoranda, telegrams, diaries, appointment calendars, books, reports, records, handwritten notes, working papers, statements, journals, worksheets, charts, plans, diagrams, sketches, brochures, pamphlets, manuals, newspapers, magazines, bulletins, circulars, contracts, proposals, written agreements, interoffice communications, photographs, pictures, slides, films, microfilm, voice recordings, tapes, videotapes, computer input and output

material, electronic data and other writings or communications of any kind or description whatsoever, in the possession, custody or control of North Austin, its attorneys, officers, employees and/or agents.

5. "Relating to" means consisting of, referring to, reflecting, containing, discussing, describing, evidencing, substantiating, memorializing, prepared in connection with, used in preparation for, pertaining to, having any relationship to, or in any way being factually, legally, or logically connected to, in whole or in part, the stated subject matter. "Relating to" also means, without limitation, embodying, mentioning or concerning, directly or indirectly, the subject matter identified in the request.

6. "Possession, custody, or control" of an item means that the person either has physical possession of the item or has a right to possession that is equal or superior to the person who has physical possession of the item.

7. "File" means any collection or group of documents maintained, held, stored, or used together, including, without limitation, all collections of documents maintained, held or stored in folders, notebooks, or other devices for separating or organizing documents.

8. "Person" means any natural person, corporation, firm association, partnership, joint venture, proprietorship, governmental body, or any other organization, business, or legal entity, and all predecessors or successors in interest.

9. "Concerning" means, in whole or in part, directly or indirectly, referring to, relating to, connected with, commenting on, responding to, showing, describing, analyzing, reflecting, and constituting.

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- a. The full name;
- b. The present or last known residential address;

- c. The present of last known residential and office telephone numbers;
- d. The present occupation, job title, employer, and employer's address at the time of the event or period referred to in each particular request; and
- e. In the case of any person other than an individual, identify the officer, employee, or agent most closely connected with the subject matter of the request and identify the officer who is responsible for supervising that officer or employee.

13. "Describe" and "identify," when referring to a document, are defined to require that you state the following:

- a. The nature (e.g., letter, handwritten note) of the document;
- b. The title or heading that appears on the document;
- c. The date of the documents and the date of each addendum, supplement, or other addition or change;
- d. The identity of the author and of the signor of the document, and of the person on whose behalf or at whose request or direction the document was prepared or delivered; and
- e. The present location of the document, and the name, address, position, or title, and telephone number of the person or person having custody of the document.

14. The word "and" means "and/or."

15. The word "or" means "or/and."

III. PRODUCTION REQUESTS

1. Please provide budgets formally adopted by North Austin for current year and previous five (5) years. Please include all back up data for each budget formally adopted by North Austin.

2. Please provide copies of the budgeted water revenue for North Austin versus actual water revenue reports for the past five (5) completed fiscal years.

3. Please provide copies of all revenue forecast models used by North Austin for the last five (5) years.

4. Please provide copies of the resolutions or orders to establish water rates that have been formally adopted by North Austin for current year and previous five (5) years.

5. Please provide documents that show the number of customers served by North Austin by each customer class for current year and previous five (5) years.

6. Please provide line item detail of each operating and capital expense assigned to the water rate revenue requirements of North Austin for current year and previous five (5) years.

7. Please provide copies of all water rate studies completed by North Austin or at the direction of North Austin, within last five (5) years.

8. Please provide all documents which describe, with specificity, the North Austin's state approved water conservation plan.

9. Please provide dated "screen shot" copies of North Austin's web pages advertising the availability of water conservation programs to their customers.

10. Please provide documents, reports, memoranda, and pamphlets that describe North Austin's current financial reserves fund policy; its treatment of reserve funds, and its use of such funds for new construction and operations and maintenance. Provide copies of documents that describe said policy.

Respectfully submitted,

KAREN KENNARD,
City Attorney

C. CLARK CORNWELL
Assistant City Attorney

WEBB & WEBB
712 Southwest Tower
211 East Seventh Street
Austin, Texas 78767
Tel: (512) 472-9990
Fax: (512) 472-3183

By: _____

Stephen P. Webb
State Bar No. 21033800
s.p.webb@webbwebblaw.com

Gwendolyn Hill Webb
State Bar No. 21026300
g.hill.webb@webbwebblaw.com

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, U.S. mail and/or Certified Mail Return Receipt Requested on all parties whose names appear on the attached mailing list on this the _____ day of _____, 2014.

FOR JUDGE SHENOY:

Honorable Pratibha J. Shenoy
Administrative Law Judge
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701
Phone: 512-475-4993
Fax: 512-322-2061
via Electronic Upload

FOR THE SOAH DOCKET CLERK:

Ms. Monica Luna, Docketing Clerk
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701
Phone: 512-475-4993
Fax: 512-322-2061
via Electronic Upload

FOR THE TCEQ CHIEF CLERK:

Ms. Bridget Bohac, Chief Clerk
MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Phone: 512-239-3300
Fax: 512-239-3311

FOR PETITIONERS:

Mr. Randall B. Wilburn, Attorney at Law
3000 South I.H. 35, Suite 150
Austin, Texas 78704
Phone: 512-535-1661
Fax: 512-535-1678
rbw@randallwillburnlaw.com

Mr. John Carlton, Attorney at Law
The Carlton Law Firm, P.L.L.C.
2705 Bee Cave Road, Suite 200
Austin, Texas 78746
Phone: 512-614-0901
Fax: 512-900-2855
john@carltonlawaustin.com

FOR THE OPIC:

Mr. Garrett Arthur, Attorney at Law
MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Phone: 512-239-6363
Fax: 512-239-6377
Garrett.arthur@tceq.texas.gov

FOR THE TCEQ EXECUTIVE DIRECTOR:

Via Electronic Upload

Mr. Ron Olson, Staff Attorney
Environmental Law Division, MC-173
Texas Commission on Environmental Quality
PO Box 13087
Austin, Texas 78711-3087
Phone: 512-239-0608
Fax: 512-239-0606
Ron.olson@tceq.texas.gov

STEPHEN P. WEBB

PETITION OF NORTH AUSTIN § BEFORE THE STATE OFFICE
UTILITY DISTRICT NO. 1, §
NORTHTOWN MUNICIPAL UTILITY §
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

PETITION OF NORTH AUSTIN § BEFORE THE STATE OFFICE
MUNICIPAL UTILITY DISTRICT NO. §
1, NORTHTOWN MUNICIPAL §
UTILITY DISTRICT, AND WELLS §
BRANCH MUNICIPAL UTILITY §
DISTRICT FROM THE RATEMAKING § OF
ACTIONS OF THE CITY OF AUSTIN §
AND REQUEST FOR INTERIM RATES §
IN WILLIAMSON AND TRAVIS §
COUNTIES § ADMINISTRATIVE HEARINGS

On this day, Stephen P. Webb appeared before me, the undersigned notary public, and after I administered an oath to him, upon his oath, he said:

1. My name is Stephen P. Webb. I am more than 21 years of age, having been born on August 10, 1954, and capable of making this Affidavit. The matters contained herein are true and correct and are within my personal knowledge.

2. I am of sound mind and am fully competent to make this Affidavit.



3. I am an attorney licensed in the State of Texas.

4. I am co-counsel representing Respondent, City of Austin, in the above referenced water rate appeal and wastewater rate appeal.

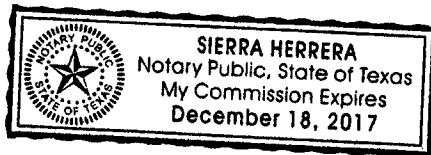
5. I have read the City of Austin's Reply to Petitioners Motion to Compel Responses attached to this Affidavit and all statements of fact concerning my telephone contacts with Petitioners' counsel contained within Austin's response are true and accurate.

FURTHER AFFIANT SAYETH NAUGHT


Stephen P. Webb, Affiant

IN THE COUNTY OF TRAVIS, STATE OF TEXAS:

SWORN TO and SUBSCRIBED before my by Stephen P. Webb on the 16th
day of September, 2014.




Notary Public for the State of Texas