



Control Number: 42867



Item Number: 59

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

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§ ADMINISTRATIVE HEARINGS

CITY OF AUSTIN'S OBJECTIONS AND RESPONSES
TO PETITIONERS' FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Wells Branch MUD, Travis County WCID No. 10, Northtown MUD, and North Austin Utility District No. 1, through its attorneys of record, Randall Wilburn, Attorney at Law, 3000 South IH 35, Suite 150, Austin, Texas 78704; and John J. Carlton, The Carlton Law Firm, PLLC, 2705 Bee Cave Road, Suite 200, Austin, Texas 78746.

COMES NOW, the City of Austin, (herein sometimes referred to as "City," "Austin" or "Respondent"), in the above styled and docketed consolidated wholesale water and wholesale wastewater rate appeal proceeding and serves this, the City of Austin's Response to Petitioners' Fourth Request for Production of Documents, on all parties to this Proceeding.

I. GENERAL OBJECTIONS TO INSTRUCTIONS

Austin objects to Petitioners' "Instructions" and will not adhere to any such instructions to the extent they are inconsistent with, or in addition to, the applicable procedures and rules set forth in the Texas Rules of Civil Procedure. Austin will respond to Petitioners' requests for production consistent with the Texas Rules of Civil Procedure. Austin will respond to Petitioners' requests for production only as required by Tex. R. Civ. P. 193, 196.2(b) 197.2(b)-(c). Subject to any objections and assertions of privilege that Austin may make, Austin will produce only those relevant, non-privileged documents in their possession, custody, or control that are responsive to Petitioners' requests.

II. GENERAL OBJECTIONS TO DEFINITIONS

Austin objects to Petitioners' "Definitions" and will not adhere to any such definitions to the extent that they are inconsistent with, or in addition to, the applicable rules set forth in the Texas Rules of Civil Procedure. Austin specifically objects to, and will not adhere to, the following terms as defined by Petitioners.

Definition of "you," "your," and "City."

Petitioners' definition of "you," "your," and "City" are improper, overbroad, and on their face unreasonable. They include "affiliates" and "expert witnesses" without a reasonable limit to a time period, subject matter or subject area or whether such "affiliates" or consultant expert witnesses are located within the state of Texas. Using these definitions with Petitioners' overly broad requests would require Austin to produce hundreds or thousands of documents from former and present consultants or other entities on numerous subjects going back in time, indefinitely.

Definition of "Source Documentation."

Petitioners' definition of this term is overly broad, harrassive, and not reasonably related to the discovery of admissible evidence. In order to respond completely to Petitioners' request

for production, Austin would have to assemble and produce all "invoices, receipts, cash slips, deposit slips, check ledgers and work papers" without a reasonable time limit or scope. Such a request would require Austin to expend thousands of man hours to produce documents in needless detail, thereby increasing the costs of this case beyond what is reasonable or necessary. Further, Austin is not clear by how Petitioners define the term "business deal" or what documents would reasonably comprise a "business deal."

III. RESPONSES TO REQUESTS FOR PRODUCTION SUBJECT TO GENERAL AND SPECIFIC OBJECTIONS, RIGHT TO AMEND OR SUPPLEMENT

Each of these responses is submitted pursuant to applicable law and rules, and each response provided is expressly subject to the general and specific objections set forth herein. By producing documents in response to a request, Austin does not waive or suspend their objections to the request. Additionally, Austin reserves the right to amend or supplement this response in accordance with applicable rules.

RESPONSE: Respondent objects to this request as overly broad, unduly burdensome and not limited to a reasonable time or scope. Respondent further objects to the request as being made for the purpose of harassment.

IV. RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 4-1. Produce recordings of and documents related to the recordings for any portion of any City meetings with Petitioners since the first Petition was filed.

RESPONSE: Respondent objects to this request as overly broad, unduly burdensome and not limited to a reasonable time or scope. Respondent further objects to the request as being made for the purpose of harassment.

Without waiving said objections, there are no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 4-2. Produce transcripts of and documents related to the transcript for any portion of any City meetings with Petitioners since the first Petition was filed.

RESPONSE: Respondent objects to this request as overly broad, unduly burdensome and not limited to a reasonable time or scope. Respondent further objects to the request as being made for the purpose of harassment.

Without waiving said objections, there are no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 4-3. Produce recordings of and documents related to the recordings for any portion of any pre-hearing conference before the State Office of Administrative Hearings related to the Petitions.

RESPONSE: Respondent objects to this request as overly broad, unduly burdensome and not limited to a reasonable time or scope. Respondent further objects to the request as being made for the purpose of harassment.

Without waiving said objections, there are no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 4-4. Produce transcripts of and documents related to the transcript for any portion of any pre-hearing conference before the State Office of Administrative Hearings related to the Petitions.

RESPONSE: Respondent objects to this request as overly broad, unduly burdensome and not limited to a reasonable time or scope. Respondent further objects to the request as being made for the purpose of harassment.

Without waiving said objections, *see* attached transcripts of Prehearing Conferences conducted on April 2, 2014, May 14, 2014 and September 17, 2014, Austin RPD Resp. 8030-8075.

Also see attached compact disc containing audio recordings for Prehearing Conferences conducted on April 2, 2014 and May 14, 2014. A cover page for this compact disc has been bated stamped Austin RPD Resp. 8076.

REQUEST FOR PRODUCTION NO. 4-5. Produce recordings of and documents related to the recordings for any portion of any pre-hearing conference before the Public Utility Commission related to the Petitions.

RESPONSE: Respondent objects to this request as overly broad, unduly burdensome and not limited to a reasonable time or scope. Respondent further objects to the request as being made for the purpose of harassment.

Without waiving said objections, there are no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 4-6. Produce transcripts of and documents related to the transcript for any portion of any pre-hearing conference before the Public Utility Commission related to the Petitions.

RESPONSE: Respondent objects to this request as overly broad, unduly burdensome and not limited to a reasonable time or scope. Respondent further objects to the request as being made for the purpose of harassment.

Without waiving said objections, there are no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 4-7. Produce recordings of and documents related to the recordings for any portion of any pre-hearing conference before the Texas Commission on Environmental Quality related to the Petitions.

RESPONSE: Respondent objects to this request as overly broad, unduly burdensome and not limited to a reasonable time or scope. Respondent further objects to the request as being made for the purpose of harassment.

Without waiving said objections, there are no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 4-8. Produce transcripts of and documents related to the transcript for any portion of any pre-hearing conference before the Texas Commission on Environmental Quality related to the Petitions.

RESPONSE: Respondent objects to this request as overly broad, unduly burdensome and not limited to a reasonable time or scope. Respondent further objects to the request as being made for the purpose of harassment.

Without waiving said objections, there are no documents responsive to this request.

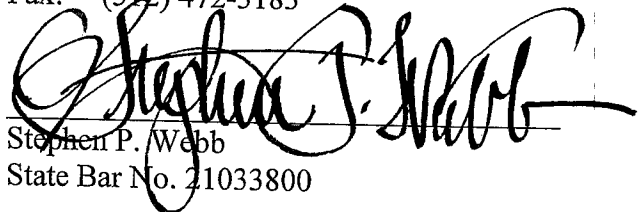
Respectfully submitted,

KAREN KENNARD,
City Attorney

D. CLARK CORNWELL
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By:


Stephen P. Webb
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Gwendolyn Hill 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 October, 2014.

FOR THE PUBLIC UTILITY COMMISSION:

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

FOR THE SOAH DOCKET CLERK:

Ms. Monica Luna, Docketing Clerk
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701
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(Without Attachments)

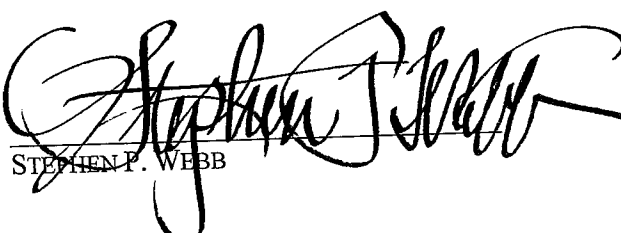
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STEPHEN P. WEBB

SOAH No. 582-13-4617 TCEQ No. 2013-0865-UCR
SOAH No. 582-14-3145 TCEQ No. 2014-0489-UCR

Petition of North Austin Utility District No. 1

Prehearing Conference Audio Recording

04/02/2014



7800 N. Mopac Expressway, Suite 120
Austin, Texas 78759
512-474-2233

COPY

Austin

Corpus Christi

Dallas

Houston

San Antonio

<p style="text-align: right;">Page 1</p> <p>1 SOAH DOCKET NO. 582-13-4617 TCEQ DOCKET NO. 2013-0865-UCR</p> <p>2</p> <p>3 PETITION OF NORTH AUSTIN } STATE OFFICE OF UTILITY DISTRICT NO. 1, 4 NORTHTOWN MUNICIPAL UTILITY DISTRICT, TRAVIS 5 COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 6 10 AND WELLS BRANCH MUNICIPAL UTILITY 7 DISTRICT, FROM THE RATEMAKING ACTIONS OF THE 8 CITY OF AUSTIN AND REQUEST FOR INTERIM RATES IN 9 WILLIAMSON AND TRAVIS COUNTIES } ADMINISTRATIVE HEARINGS</p> <p>10</p> <p>11 SOAH DOCKET NO. 582-14-3145 TCEQ DOCKET NO. 2014-0489-UCR</p> <p>12</p> <p>13 PETITION OF NORTH AUSTIN } STATE OFFICE OF MUNICIPAL UTILITY 14 DISTRICT NO. 1, NORTHTOWN MUNICIPAL UTILITY 15 DISTRICT, AND WELLS BRANCH MUNICIPAL UTILITY DISTRICT 16 FROM THE RATEMAKING ACTIONS OF THE CITY OF 17 AUSTIN AND REQUEST FOR INTERIM RATES IN 18 WILLIAMSON AND TRAVIS COUNTIES } ADMINISTRATIVE HEARINGS</p> <p>19</p> <p>20</p> <p>21 TRANSCRIPTION OF PREHEARING CONFERENCE</p> <p>22 FROM AUDIO RECORDING</p> <p>23 Wednesday, April 2, 2014</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES (CONTINUED)</p> <p>2</p> <p>3 FOR THE PETITIONERS:</p> <p>4 Mr. Randall B. Wilburn ATTORNEY AT LAW 3000 South IH 35, Suite 150 5 Austin, Texas 78704 Telephone: 512.535.1661 - Fax: 512.535.1678 6 email: rbw@randallwilburnlaw.com 7 ** and **</p> <p>8 Mr. John J. Carlton THE CARLTON LAW FIRM 9 2705 Bee Cave Road, Suite 200 Austin, Texas 78746 10 Telephone: 512.614.0901 - Fax: 512.900.2855 email: john@carltonlawaustin.com</p> <p>11</p> <p>12 FOR THE OFFICE OF PUBLIC INTEREST COUNSEL OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:</p> <p>13 Mr. Garrett Arthur STAFF ATTORNEY 14 P.O. Box 13087, HC-103 Austin, Texas 78711-3087 15 Telephone: 512.239.5757 - Fax: 512.239.6377 email: garrett.arthur@tceq.texas.gov</p> <p>16</p> <p>17 FOR THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:</p> <p>18 Mr. Ron Olson Mr. Hollis Henley 19 STAFF ATTORNEYS P.O. Box 13087, HC-173 20 Austin, Texas 78711-3087 Telephone: 512.239.0600 - Fax: 512.239.0606 21 email: ron.olson@tceq.texas.gov hollis.henley@tceq.texas.gov</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 BE IT REMEMBERED THAT at 10:00 a.m., on 2 Wednesday, the 2nd day of April 2014, the above-entitled 3 matter came on for hearing at the State Office of 4 Administrative Hearings, William P. Clements, Jr., 5 Building, 300 West 15th Street, Austin, Texas, before 6 PRATIBHA SHENOY, Administrative Law Judge, and the 7 following proceedings were transcribed from audio 8 recording by Lorrie A. Schnoor, Certified Shorthand 9 Reporter, Registered Merit Reporter, and Certified 10 Realtime Reporter.</p> <p>11 APPEARANCES</p> <p>12 FOR CITY OF AUSTIN:</p> <p>13 Ms. Gwendolyn Hill Webb Mr. Stephen P. Webb 14 WEBB & WEBB 211 E. 7th Street, Suite 712 15 Austin, Texas 78701 Telephone: 512.472.9990 - Fax: 512.472.3183 16 email: g.hill.webb@webbwebblaw.com 17 ** and **</p> <p>18 Mr. Clark Cornwell CITY OF AUSTIN 19 ASSISTANT CITY ATTORNEY City Hall 300 W. 2nd Street 20 P.O. Box 1088 Austin, Texas 78767-1088 21 Telephone: 512.974.6482 - Fax: 512.974.6490 email: clark.cornwell@austintexas.gov</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 PROCEEDINGS</p> <p>2 WEDNESDAY, APRIL 2, 2014</p> <p>3 (10:00 a.m.)</p> <p>4 JUDGE SHENOY: Today I am calling the 5 third prehearing conference in SOAH Docket 6 No. 582-13-4617, TCEQ Docket 2013-0865-UCR. It is a 7 petition brought by North Austin Utility District No. 1, 8 Northtown Municipal Utility District, Travis County 9 Water Control and Improvement District No. 10, and Wells 10 Branch Municipal Utility District, collectively the 11 petitioners, brought -- against the ratemaking actions 12 of the City of Austin and request for -- well, the 13 request for interim rates was filed earlier.</p> <p>14 Today is April 2nd, 2014. It's about ten 15 o'clock in the morning. We are in the Clements building 16 in Austin, Texas. My name's Pratibha Shenoy. I'm the 17 administrative law judge conducting this proceeding.</p> <p>18 I will start by taking appearances; and 19 just for convenience, I will start with -- start with my 20 left and go across.</p> <p>21 Go ahead.</p> <p>22 MR. ARTHUR: Good morning, Your Honor.</p> <p>23 Garrett Arthur for the Office of Public Interest 24 Counsel.</p> <p>25 JUDGE SHENOY: Thank you.</p>

<p style="text-align: right;">Page 5</p> <p>1 MR. WILBURN: Good morning, Your Honor. 2 Randy Wilburn here on behalf of Petitioners with John 3 Carlton. 4 MS. WEBB: I'm Gwen Webb on behalf of the 5 City of Austin, and with me today is cocounsel Stephen 6 Webb. And also previously Sharon Smith was here on 7 behalf of the City of Austin law department, and now 8 today, since Ms. Smith has left the City, is Clark 9 Cornwell, assistant city attorney. 10 JUDGE SHENOY: Thank you. 11 MR. OLSON: Good morning, Your Honor. Ron 12 Olson representing the Executive Director, with me my 13 cocounsel, Hollis Henley, and technical staff Brian 14 Dickey and Elizabeth Flores. 15 JUDGE SHENOY: Okay. Thank you all. 16 The purpose of this prehearing conference 17 is to discuss scheduling matters. There are at least 18 three issues that I know affect us. One is that, as the 19 parties have advised me, there is a wastewater appeal -- 20 fiscal 2014 City rate appeal filed by at least some of 21 the petitioners in this case, and there's an indication 22 that perhaps it will be consolidated with this -- with 23 this proceeding. I -- I have not heard from all of the 24 parties on that. And I checked this morning. As far as 25 I know, that case has not made its way to SOAH. So</p>	<p style="text-align: right;">Page 7</p> <p>1 who's going to be doing the trial in this case actually 2 profiles the testimony. 3 JUDGE SHENOY: Okay. Anything else in 4 terms of timing? The transfer is supposed to happen 5 September 1st. Is that right? 6 MR. OLSON: September 1st, yes, ma'am. 7 JUDGE SHENOY: But other than that, is 8 there any timing issue that should be -- that we should 9 be aware of in terms of the subsequent months? No. 10 MR. OLSON: Not that I'm aware of. 11 JUDGE SHENOY: Okay. All right. 12 Ms. Webb? 13 MS. WEBB: I will just say that counsel 14 for petitioners and I attended a briefing on the 15 transfer of authority, and one of the things they talked 16 about was what was going to happen to pending contested 17 case hearings. And what they said was that the PUC was 18 adopting the TCEQ regulations except to the extent that 19 they were incompatible with some of the PUC regs and 20 also that the administrative law judges and the parties 21 should have a preliminary hearing around 22 September 1st in order to discuss the application of 23 rules for the remainder of the case. 24 JUDGE SHENOY: Okay. And, Ms. Webb, 25 while -- while you have the floor, from the earlier</p>
<p style="text-align: right;">Page 6</p> <p>1 that's one thing. 2 Another matter -- and on this, I'd like to 3 hear from Mr. Olson -- is the transfer upcoming in 4 September of this case and other cases to the Public 5 Utility Commission and how that will affect us and 6 particularly any deadlines that would be imposed on the 7 Executive Director, as you've indicated. 8 And then the question would -- the other 9 question would be: Now that one deadline has changed in 10 the original schedule, is it still feasible to keep that 11 schedule at all? So a number of things here. 12 Let me start, Mr. Olson, if you can let us 13 know the status of the transfer or anything else that 14 might affect this case. 15 MR. OLSON: Well, for -- for this specific 16 case, the staff that we have involved are not going to 17 be transferring to the PUC. The only one that's 18 involved in this case that will be going to the PUC is 19 my cocounsel, Hollis Henley. And that's -- that's why 20 we sent you that letter previously asking that any 21 deadline for the Executive Director's testimony be after 22 September 1st but preferably after the 15th of 23 September. As you can imagine, there'd be a lot of, 24 kind of, uncertainty until things get transferred over 25 there, and -- and we want to make sure that proper staff</p>	<p style="text-align: right;">Page 8</p> <p>1 filings by the City, my understanding is that the City 2 believes that this case should be delayed for 3 approximately three months and combined with the other 4 wastewater appeal that we were speaking of earlier. 5 MS. WEBB: Yes, Your Honor. 6 I have talked to the parties and -- and 7 notified them. In fact, that was the basis of the 8 earlier filing that we had, which was, I think, before 9 that PUC -- or maybe it was after the PUC meeting, 10 but -- but the issue is that from -- although the State 11 Office of Administrative Hearings has not gained 12 jurisdiction of that appeal when it was served by 13 courtesy copy on the City of Austin, we began to work on 14 the -- on the wastewater matters as well from -- from 15 the City of Austin's standpoint. I don't know that -- 16 that that is -- and we -- and we were working in 17 petitioners on that. 18 But in any case, what we've really worked 19 on over the -- over the last several months have been 20 discussions and technical evaluations of cases -- of the 21 case in hopes of, number one, narrowing the issues at 22 least, but the goal, of course, was to resolve them. As 23 mentioned in our report, we were not successful in -- in 24 resolving them, but that doesn't not -- it's not for 25 lack of trying. It's not for lack of effort on the part</p>

<p style="text-align: right;">Page 9</p> <p>1 of -- of all the City staff and all the -- all the 2 technical staff involved in this hearing. 3 And that is why the combination of the 4 work that we've done already, which has apprised at 5 least petitioners of the issues in this case and -- and 6 our failure to reach agreement on the -- in our -- in 7 our mediation that we're saying, okay, you know, this is 8 the point where we have the key change, and we -- and we 9 move to preparing solely for the -- for the contested 10 case hearing, and we need more time than 11 April 25th would allow to provide our prefiled 12 testimony. 13 We have -- we have conflicts with our 14 testifying expert who is out of the country until 15 April 22nd, and he -- and he made that schedule based on 16 the schedule that existed a long time ago with the 17 March 14th deadline. 18 So, you know, there -- there are a -- so 19 what we're think thinking of -- and as long as I'm 20 talking, let me just -- let me just say something about 21 the schedule. 22 That is the schedule that we have -- 23 that -- we do have conflicts that will not make the 24 April 25th deadline, which was just an interim deadline, 25 and the rest of the schedule work. Unfortunately,</p>	<p style="text-align: right;">Page 11</p> <p>1 exhibits. And that was extended for six months so that 2 we could have these discussions, these settlement 3 discussions. That was the very purpose. 4 And so now here we are literally six 5 months since we last saw you, and we're asking for more 6 time. I'm afraid if we start adjusting the schedule, it 7 would be like dominoes; and we're not going to be able 8 to fit everybody's schedule. It's been arranged around 9 the previous agreement, vacations, et cetera. We're 10 going to push this out to January, February, March if 11 we -- if we start taking those things into consideration 12 I'm concerned about that. 13 So regarding Mr. Olson's issue, I think 14 the PUC's flow chart addresses whether ED has filed or 15 not. And the way it works, I think, is that the PUC 16 reviews these filings, the testimony; and if they're 17 comfortable with it, they adopt it. If they're 18 uncomfortable with it, they -- they ask you (inaudible) 19 to modify it. I don't think that would extend out the 20 schedule very long. 21 I had prepared a schedule in the last 22 filing with you that had the April 25th date; gave us 23 two months to prepare our case, they need two months to 24 prepare their case, and -- and (inaudible) October 25 hearing date.</p>
<p style="text-align: right;">Page 10</p> <p>1 petitioners have -- have conflicts as well. But in any 2 case, I think that -- I think that in fairness to -- to 3 the parties, and particularly Austin, and our ability to 4 present for the administrative law judge a cohesive 5 case, including our rate filing package and prefiled 6 testimony, we ought to have at least 90 days from the 7 date of the -- you know, of the date of that 8 unsuccessful mediation, which I said was June 19th. 9 And, you know, I've tried to talk to petitioners who are 10 opposed to that and come up with alternatives with their 11 schedule in mind, and I don't know where they stand at 12 this point. 13 JUDGE SHENOY: Thank you, Ms. Webb. 14 For Petitioners? 15 MR. WILBURN: Yes, ma'am. Mr. Wilburn. 16 Your Honor, in case you haven't seen it, 17 there is on the PUC website a flow chart that talks 18 about different scenarios of where the cases are. We 19 talked about if the ED has not filed prefiled or if the 20 ED hasn't had (inaudible), then it's up to the SOAH 21 judge to come up with a procedural schedule, and that 22 would go under the PUC rules after the (inaudible). 23 Regarding the request for an extension, we 24 have a schedule, which is, again, six months from the 25 (inaudible) with the other case, the direct testimony or</p>	<p style="text-align: right;">Page 12</p> <p>1 He of all people (inaudible) have the 2 hearing date moved from October -- that's when my 3 anniversary is, and my wife, I'm sure, would like me to 4 be home (inaudible). I think we need to stick with the 5 schedule. If we move this out, we're going to be nearly 6 three years since the City adopted the rules that will 7 be then decided in this -- or the rates that will be 8 being decided in this case. 9 JUDGE SHENOY: All right. And, 10 Mr. Arthur, do you have anything? 11 MR. ARTHUR: Your Honor, I -- I'll just 12 note that we don't anticipate providing prefiled 13 testimony. And given that the -- the bulk of this -- 14 this schedule may occur after September 1st, I'm -- I'm 15 neutral, I'm going to submit. 16 JUDGE SHENOY: All right. One thing that 17 I want to talk about, and -- and I -- I want -- and -- 18 and, Mr. Wilburn, I understand. I mean, I've had a look 19 at some of the flow charts, but this sort of transfer is 20 never that easy or as straightforward as we might hope 21 or think. And one of the things I want to revisit is if 22 this case is pushed off interim rates, because when the 23 subject of interim rates was first brought up, it 24 appeared that the horizon for any relief would be closer 25 to one year from the time that the rates went into</p>

<p style="text-align: right;">Page 13</p> <p>1 effect. At this point it could be closer to three years 2 or longer. And that may be a way to give some relief to 3 all of the parties. Give the City additional time, give 4 the petitioner some relief in terms of rates. 5 And the issue of jurisdiction and -- and 6 authority to provide -- to set interim rates was 7 addressed briefly and -- in the earlier filings. And 8 so, you know, if there's anyone who feels like they 9 haven't had a chance to say what they need to say on 10 that matter, we can -- we can either set briefing or we 11 can discuss it now, but that's something I'd like to 12 talk about. 13 Now, let me start again with Mr. Olson. 14 Do you have any comments or feedback? 15 MR. OLSON: No, the Executive Director 16 wouldn't be involved in an interim rate for this matter. 17 JUDGE SHENOY: Right. But -- and -- and 18 if it were pushed back, would the interim rates set 19 the -- it would make no difference, but you would have 20 the time to file after the transfer? 21 MR. OLSON: Right. That would be good. 22 JUDGE SHENOY: Right. 23 Ms. Webb? 24 MS. WEBB: Your Honor, at the time that we 25 had the discussion on interim rates, the city council</p>	<p style="text-align: right;">Page 15</p> <p>1 schedule. 2 And finally, the -- you know, I do agree 3 with you that these transfers of jurisdiction are -- 4 are -- are difficult. And I would say that in the last 5 rate case that we had involving these -- involving 6 districts and the City of Austin, the timeline was 1988 7 to 1989. So this case is not -- is not unusual in -- in 8 that regard in that we're moving along. 9 In response to Mr. Wilburn's comments 10 about the time that we have spent on this, yes, you 11 know, it -- we did -- we did allow time for -- for 12 discussions; but, you know, I don't -- I don't know 13 whether -- who was hopeful and who wasn't, but it's 14 simply impractical to both -- to both -- to both prepare 15 prefiled testimony and engage in serious discussions 16 about the elements of this case. 17 JUDGE SHENOY: Okay. 18 Mr. Wilburn or Mr. Carlton? 19 MR. CARLTON: We're talking about interim 20 rates, you know -- and I think, Your Honor, you're 21 correct. 22 We filed a motion for interim rates, and I 23 know we briefed this before. And, you know, I'll echo 24 Mr. Wilburn's point. We're a long way from the 25 preliminary hearing. And our clients are prejudiced by</p>
<p style="text-align: right;">Page 14</p> <p>1 had -- had already adopted the schedule -- the rates for 2 2014. Those are for fiscal year 2014, which is where we 3 are. 4 This is -- that is the -- those are -- 5 those rates are -- are -- are being paid by -- by 6 petitioners and, in fact, there have -- there is no -- 7 there's no request for interim rates regarding those -- 8 regarding those rates, and there is no -- so I mean, 9 I'm -- I'm assuming that you wouldn't be doing it sua 10 sponte. 11 So in answer to your question would we 12 like briefing on it, yes, especially in the context 13 of -- of saying that this case, for some reason, has to 14 be different from every other case in which the parties 15 simply work around their schedules and -- and come up 16 with something that everybody can live with. 17 And it's true that the transfer to the PUC 18 adds additional reason for adjusting the schedule, 19 but -- but I think that there needs to be some -- some 20 impetus for that. 21 So I would -- I came here today to talk 22 about the schedule and not to talk about interim rates. 23 And I certainly would like to -- to revisit that and see 24 whether -- if you're, you know, sua sponte offering that 25 as a -- as a basis for coming up with an agreed</p>	<p style="text-align: right;">Page 16</p> <p>1 the fact that we're having to wait even longer now for 2 no reason of what we've done. The schedule was set for 3 prefiled testimony to be filed on certain dates. I 4 can't control whether the other side is doing that. 5 From an interim rate standpoint, interim rate relief 6 would be helpful to our clients, but ultimately we want 7 rate relief permanently sooner. 8 I think you could easily establish interim 9 rates going back to the rates the City was charging 10 before they made their change in February of 2013. I 11 think there's quite a bit that will be going -- or '12. 12 I'm going back looking at our pleadings, but the rate 13 that was in effect prior to the change that we appealed. 14 The City has, in fact, changed their rate since then as 15 well. So not only do we have that increase, we've got 16 another one that's come in. And so I think it would be 17 fair to roll back those interim rates, particularly if 18 we're looking at a much extended schedule. 19 You know, I'm happy to brief it further, 20 but I think we've already provided the information 21 you -- you need in order to make that decision. 22 JUDGE SHENOY: All right. Okay. 23 Mr. Arthur, did you have anything 24 before -- 25 MR. ARTHUR: Regarding interim rates, Your</p>

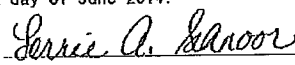
<p style="text-align: right;">Page 17</p> <p>1 Honor, I -- I -- I'm not taking a position on that.</p> <p>2 JUDGE SHENOY: Okay.</p> <p>3 Mr. Webb?</p> <p>4 MR. WEBB: Your Honor, Stephen Webb, also</p> <p>5 with the City of Austin.</p> <p>6 Our position hasn't changed on interim</p> <p>7 rates and the authority to grant interim rates. Of</p> <p>8 course we would like additional briefing on it, but we'd</p> <p>9 also like to emphasize that this case has -- has been a</p> <p>10 moving target. We got an actual petition for wastewater</p> <p>11 relief that was filed, I believe, in December. We've</p> <p>12 been pursuing settlement negotiations as if the case is</p> <p>13 consolidated, and the parties have communicated with us</p> <p>14 as if the two cases are consolidated.</p> <p>15 So it's not even clear what prefled</p> <p>16 testimony we're supposed to prepare. Does it include</p> <p>17 wastewater rates as well? Is the case at SOAH at all?</p> <p>18 Should we be talking about it as if it is? Those are</p> <p>19 all matters that are not resolved. And to hold us to a</p> <p>20 schedule that was designed for an agenda that didn't</p> <p>21 include any of the wastewater rates alone doesn't really</p> <p>22 make sense.</p> <p>23 As to the transfer from one agency to</p> <p>24 another, that really should not prejudice the parties,</p> <p>25 either of the parties. It shouldn't prejudice the City</p>	<p style="text-align: right;">Page 19</p> <p>1 here?</p> <p>2 MR. WILBURN: If and when it's here, we'd</p> <p>3 like to see them consolidated, Your Honor.</p> <p>4 JUDGE SHENOY: Okay. So there isn't an</p> <p>5 issue. It's just a question of where it is right now,</p> <p>6 which Mr. Olson or Mr. Henley, I don't know if you can</p> <p>7 speak to that.</p> <p>8 UNIDENTIFIED SPEAKER: I -- I think right</p> <p>9 now, it is going through the process of being referred;</p> <p>10 and I think it just has to go through the -- the right</p> <p>11 management to -- to get here.</p> <p>12 JUDGE SHENOY: Okay.</p> <p>13 UNIDENTIFIED SPEAKER: But it's in that</p> <p>14 process.</p> <p>15 JUDGE SHENOY: But no issues anticipated</p> <p>16 with it being sent over?</p> <p>17 UNIDENTIFIED SPEAKER: Right.</p> <p>18 MR. WILBURN: Your Honor --</p> <p>19 JUDGE SHENOY: Yes.</p> <p>20 MR. WILBURN: -- just real quick. The</p> <p>21 City has proposed basically a third rate increase that</p> <p>22 would (inaudible) in September, so I think interim rates</p> <p>23 would be appropriate.</p> <p>24 You know, regarding the schedule, we knew</p> <p>25 about the transfer to the PUC when we all agreed to the</p>
<p style="text-align: right;">Page 18</p> <p>1 of Austin that the State of Texas chose to move the rate</p> <p>2 issues from -- the rate matters from one agency to</p> <p>3 another.</p> <p>4 We are not trying to use that as some</p> <p>5 basis to get delayed, but the other matters involving</p> <p>6 the subject matter of this case, the organization of</p> <p>7 this case, at cetera, are -- would normally push any</p> <p>8 hearing or any contested case a little bit just to see</p> <p>9 where the dust has settled. To say no we can't do that</p> <p>10 because we have this other transfer of authority, that</p> <p>11 doesn't make sense, and it -- that would prejudice the</p> <p>12 parties.</p> <p>13 JUDGE SHENOY: I --</p> <p>14 MR. WEBB: So --</p> <p>15 JUDGE SHENOY: I understand what you're</p> <p>16 saying, Mr. Webb. Thank you.</p> <p>17 Let me ask -- I know not all of the</p> <p>18 petitioners are involved in the wastewater appeal, so --</p> <p>19 but they are represented by, Mr. Wilburn, you and</p> <p>20 Mr. Carlton?</p> <p>21 MR. WILBURN: Yes, Your Honor.</p> <p>22 JUDGE SHENOY: All right. And so do your</p> <p>23 clients, which now I'm talking about a subset of your</p> <p>24 clients, do they object or do you know whether there's a</p> <p>25 problem with consolidating that case if and when it's</p>	<p style="text-align: right;">Page 20</p> <p>1 schedule back in October. And we took that into account</p> <p>2 which is evidenced by the fact that we've had</p> <p>3 (inaudible) on their case in August before it</p> <p>4 transferred. We all knew that was going to happen.</p> <p>5 Well, the schedule that I submitted allows</p> <p>6 the City, in two months, to get their case filed</p> <p>7 April 25th, the actual month, gives us the two months</p> <p>8 and the ED two months.</p> <p>9 To be honest, Your Honor, all the</p> <p>10 information that the City needs to file the test year</p> <p>11 information, known and measurable changes, all those</p> <p>12 things that they should have presented to the city</p> <p>13 council (inaudible) two years ago shouldn't -- it really</p> <p>14 shouldn't take long to prepare prefled testimony.</p> <p>15 MS. WEBB: Well, I -- I just want to say</p> <p>16 that -- that the position of Petitioners in this case is</p> <p>17 unusual.</p> <p>18 It's true, they filed a -- they did file</p> <p>19 the wastewater case on December 10th. It's now</p> <p>20 April 2nd. I have no knowledge or understanding of the</p> <p>21 process that is involved in getting it referred. I had</p> <p>22 an email from Mr. Wilburn saying it -- a couple of weeks</p> <p>23 ago saying it would be referred any day now, but -- but</p> <p>24 that is -- that is -- those are the facts that have</p> <p>25 changed what we agreed to back in -- back on</p>

<p style="text-align: right;">Page 21</p> <p>1 October 8th.</p> <p>2 My -- as I mentioned, our testifying</p> <p>3 expert is out of the country. It is not feasible, and</p> <p>4 he agreed to this when we had a different set of</p> <p>5 circumstances, including before any other further appeal</p> <p>6 was filed. The City of Austin has not increased</p> <p>7 Petitioners' rates since the last prehearing conference</p> <p>8 that we had and the -- and since the -- since the</p> <p>9 October 8th prehearing conference that we had where we</p> <p>10 set the schedule.</p> <p>11 So, you know, let's not confuse rates and</p> <p>12 schedules and -- and all that kind of thing because</p> <p>13 that's -- you know, the -- the rates are -- the rates</p> <p>14 went into effect on February 1st, 2013 and then again on</p> <p>15 October 1, 2 -- on -- on October 1, 2013. Those are the</p> <p>16 rates that have been in effect during the pendency of</p> <p>17 this hearing. Nothing else has happened.</p> <p>18 So, you know, this case is not a</p> <p>19 punishment for the City of Austin. It's an opportunity</p> <p>20 for us to come and present to you the information.</p> <p>21 It is difficult. It is difficult to</p> <p>22 present the information included in the discovery and</p> <p>23 the rate filing package that we will present. So it's</p> <p>24 not -- it is simply not feasible, and I don't understand</p> <p>25 Petitioner's insistence that April 25th is some day</p>	<p style="text-align: right;">Page 23</p> <p>1 denied, so I'll -- I'll allow it to be re-urged with any</p> <p>2 additional briefing that you see fit. So what I'd like</p> <p>3 is for Petitioners to go first, file something, and then</p> <p>4 the City would have an opportunity to respond. Any</p> <p>5 other parties could also weigh in.</p> <p>6 Get a calendar here. Actually, we can go</p> <p>7 briefly off the rec --</p> <p>8 (Discussion off the record)</p> <p>9 JUDGE SHENOY: Let's go back on the</p> <p>10 record. We were off the record for a brief period to</p> <p>11 discuss dates for filing briefing on the issue of</p> <p>12 interim rates. Petitioners will re-urge their motion</p> <p>13 for interim rates with any briefing on jurisdiction</p> <p>14 authority, any other matters that need to be addressed,</p> <p>15 and will file that by April 11th.</p> <p>16 The City and any other parties who wish to</p> <p>17 respond and file any position will be filing that on or</p> <p>18 before April 25th.</p> <p>19 And we will schedule a fourth prehearing</p> <p>20 conference on May 14th -- let's say 10 o'clock a.m.</p> <p>21 again -- and I'll issue an order with all of these</p> <p>22 dates; but at that May 14th prehearing conference, my</p> <p>23 goal and intention right now, assuming that the -- the</p> <p>24 wastewater case will be transferred is to set a new</p> <p>25 schedule for both cases to be consolidated to go to</p>
<p style="text-align: right;">Page 22</p> <p>1 inviolate for -- for a case that really doesn't exist in</p> <p>2 the form that was agreed on.</p> <p>3 JUDGE SHENOY: Okay. So I think I've</p> <p>4 heard what I need to hear from everyone, and I'll just</p> <p>5 put on the table what I'm thinking.</p> <p>6 It seems to make sense to combine this</p> <p>7 case and the wastewater case, and Petitioners are not</p> <p>8 objecting to that. That -- this is a -- something that,</p> <p>9 you know, would make sense. It hasn't come here for</p> <p>10 whatever reason, but given that it hasn't and today is</p> <p>11 April 2nd, it just is unlikely that we can have this</p> <p>12 hearing happen in October and have everything done in</p> <p>13 time so that also the Agency has time to respond.</p> <p>14 So my inclination is to wait a little</p> <p>15 while longer just to -- just to get this through the</p> <p>16 process. And, Mr. Olson, I'll -- I'll ask you to maybe</p> <p>17 personally look into that and push it along if it needs</p> <p>18 something to get it over here to have it consolidated</p> <p>19 and then to set a new schedule, but I'm also very</p> <p>20 strongly inclined to set interim rates -- I'm not saying</p> <p>21 what that would be -- and I'd like to get briefing on</p> <p>22 that. And I'd like the briefing to be in a very short</p> <p>23 time frame because, really, I do feel a lot of it has</p> <p>24 been discussed already.</p> <p>25 The motion earlier that was pending was</p>	<p style="text-align: right;">Page 24</p> <p>1 hearing.</p> <p>2 All right. And, Mr. Wilburn, I understand</p> <p>3 you had something you wanted to say on the record.</p> <p>4 MR. WILBURN: Just real quick, Your Honor,</p> <p>5 for our clients' budgetary purposes, I think it best to</p> <p>6 consolidate. We're talking about two different test</p> <p>7 years, budget years, then we would have basically two</p> <p>8 different cases in one. So you might think about that,</p> <p>9 whether you want to consolidate (inaudible). We don't</p> <p>10 want to prejudice our one client that's not part of</p> <p>11 this --</p> <p>12 JUDGE SHENOY: Right.</p> <p>13 MR. WILBURN: -- by (inaudible).</p> <p>14 JUDGE SHENOY: Well, and not having seen</p> <p>15 it, I can't say. So I will keep that in mind, though.</p> <p>16 MS. WEBB: And I just would say that</p> <p>17 before we go off the record that at this time, the --</p> <p>18 other than the dates that you've given, the other dates</p> <p>19 are suspended?</p> <p>20 JUDGE SHENOY: That's right.</p> <p>21 MS. WEBB: Okay.</p> <p>22 JUDGE SHENOY: And -- thank you, Ms. Webb.</p> <p>23 I will say that in the order that I issue after this as</p> <p>24 well that all other dates are suspended pending our next</p> <p>25 prehearing conference.</p>

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1 Anyone else?
2 Mr. Olson, anything final?
3 MR. OLSON: No, ma'am. We'll just do our
4 best to get it here.
5 JUDGE SHENOY: Okay. Anyone else?
6 (No response)
7 JUDGE SHENOY: All right. Very good.
8 Thank you all for being available, and I will see
9 filings from you, and then I will see you in person on
10 May 14th
11 We're off the rec --
12 (Audio proceedings concluded)
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1 STATE OF TEXAS)
2 COUNTY OF TRAVIS)
3 I, Lorrie A. Schnoor, Certified Shorthand
4 Reporter in and for the State of Texas, Registered Merit
5 Reporter and Texas Certified Realtime Reporter, do
6 hereby certify that the foregoing is a correct
7 transcription, to the best of my ability, from the audio
8 recording of the proceedings in the above-entitled
9 matter.
10 I FURTHER CERTIFY THAT I am neither counsel
11 for, related to, nor employed by any of the parties to
12 the action in which this proceeding was taken, and
13 further that I am not financially or otherwise
14 interested in the outcome of the action.
15 IN WITNESS WHEREOF, I have hereunto set my hand
16 and seal this 16th day of June 2014.
17 
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SOAH No. 582-13-4617 TCEQ No. 2013-0865-UCR
SOAH No. 582-14-3145 TCEQ No. 2014-0489-UCR

Petition of North Austin Utility District No. 1

Prehearing Conference Audio Recording

05/14/2014



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1	SOAH DOCKET NO. 582-13-4617 TCEQ DOCKET NO. 2013-0865-UCR	1	APPEARANCES (CONTINUED)
2		2	FOR THE PETITIONERS:
3	PETITION OF NORTH AUSTIN UTILITY DISTRICT NO. 1, NORTH TOWN 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	3	Mr. Randall B. Wilburn ATTORNEY AT LAW 3000 South IH 35, Suite 150 Austin, Texas 78704 Telephone: 512.535.1661 - Fax: 512.535.1678 email: rbw@randallwilburnlaw.com ** and **
4	STATE OFFICE OF	4	Mr. John J. Carlton THE CARLTON LAW FIRM 2705 Bee Cave Road, Suite 200 Austin, Texas 78746 Telephone: 512.614.0901 - Fax: 512.900.2855 email: john@carltonlawaustin.com
5		5	
6		6	
7		7	
8		8	
9	ADMINISTRATIVE HEARINGS	9	
10		10	
11	SOAH DOCKET NO. 582-14-3145 TCEQ DOCKET NO. 2014-0489-UCR	11	FOR THE OFFICE OF PUBLIC INTEREST COUNSEL OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:
12		12	Mr. Garrett Arthur STAFF ATTORNEY P.O. Box 13087, MC-103 Austin, Texas 78711-3087 Telephone: 512.239.6767 - Fax: 512.239.6377 email: garrett.arthur@tceq.texas.gov
13	PETITION OF NORTH AUSTIN MUNICIPAL UTILITY DISTRICT NO. 1, NORTH TOWN 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	13	
14	STATE OFFICE OF	14	
15		15	
16		16	FOR THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:
17		17	Mr. Ron Olson Mr. Hollis Henley STAFF ATTORNEYS P.O. Box 13087, MC-173 Austin, Texas 78711-3087 Telephone: 512.239.0600 - Fax: 512.239.0606 email: ron.olson@tceq.texas.gov hollis.henley@tceq.texas.gov
18	ADMINISTRATIVE HEARINGS	18	
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1	BE IT REMEMBERED THAT on Wednesday, the 14th day of May 2014, the above-entitled matter came on for hearing at the State Office of Administrative Hearings, William P. Clements, Jr., Building, 300 West 15th Street, Austin, Texas, before PRATIBHA SHENOY, Administrative Law Judge, and the following proceedings were transcribed from audio recording by Lorrie A. Schnoor, Certified Shorthand Reporter, Registered Merit Reporter, and Certified Realtime Reporter.	1	EXHIBIT INDEX
2	APPEARANCES	2	EXECUTIVE DIRECTOR
3	FOR CITY OF AUSTIN:	3	Wastewater Petition
4	Ms. Gwendolyn Hill Webb	4	Notice of Hearing
5	Mr. Stephen P. Webb	5	
6	WEBB & WEBB	6	
7	211 E. 7th Street, Suite 712	7	
8	Austin, Texas 78701	8	
9	Telephone: 512.472.9990 - Fax: 512.472.3183	9	
10	email: g.hill.webb@webbwebblaw.com	10	
11	** and **	11	
12	Mr. Clark Cornwell	12	
13	CITY OF AUSTIN	13	
14	ASSISTANT CITY ATTORNEY	14	
15	City Hall	15	
16	300 W. 2nd Street	16	
17	P.O. Box 1088	17	
18	Austin, Texas 78767-1088	18	
19	Telephone: 512.974.6482 - Fax: 512.974.6490	19	
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<p style="text-align: right;">Page 5</p> <p>1 PROCEEDINGS</p> <p>2 WEDNESDAY, MAY 14, 2014</p> <p>3 JUDGE SHENOY: Today I am calling a joint</p> <p>4 prehearing conference in SOAH Docket No. 582-13-4617.</p> <p>5 That is a petition brought by North Austin Utility</p> <p>6 District No. 1, Northtown Municipal Utility District,</p> <p>7 Travis County Water Control and Improvement District</p> <p>8 No. 10, and Wells Branch Municipal Utility District from</p> <p>9 the Ratemaking Actions Concerning Water Rates of the</p> <p>10 City of Austin.</p> <p>11 And the second case which is having the</p> <p>12 prehearing conference today, but I will note has not</p> <p>13 been consolidated -- will be considered for</p> <p>14 consolidation during this prehearing conference -- that</p> <p>15 docket is 582-14-3145, and it is a petition brought by</p> <p>16 three of the parties that I mentioned earlier, with the</p> <p>17 exception of Travis County Water Control and Improvement</p> <p>18 District No. 10, and it is pertaining to the wastewater</p> <p>19 rates set by the City of Austin.</p> <p>20 What I'd like to do first is take</p> <p>21 appearances. When you make your appearance, please</p> <p>22 state who you represent and in which case at this point</p> <p>23 so that we can keep it straight. I'll start from my</p> <p>24 left.</p> <p>25 MR. WILBURN: Good morning, Your Honor.</p>	<p style="text-align: right;">Page 7</p> <p>1 compel that I -- that is pending. And finally, we need</p> <p>2 to set a schedule for this case to go to hearing.</p> <p>3 So let's start with jurisdiction in the</p> <p>4 14-3145 case. Well, as a preliminary matter, does --</p> <p>5 does the ED have any exhibits to offer?</p> <p>6 UNIDENTIFIED SPEAKER: I do. And I'll be</p> <p>7 (inaudible) shortly.</p> <p>8 The Executive Director has two exhibits.</p> <p>9 ED Exhibit A is the petition for -- wastewater petition</p> <p>10 filed by the petitioners. ED Exhibit B is the notice of</p> <p>11 hearing sent to the chief clerk to all parties in</p> <p>12 today's hearing.</p> <p>13 JUDGE SHENOY: Okay.</p> <p>14 UNIDENTIFIED SPEAKER: May I approach?</p> <p>15 JUDGE SHENOY: Yes. And I'm assuming</p> <p>16 there are no objections to Exhibits A and B. Those two</p> <p>17 are admitted.</p> <p>18 (Exhibits ED-A and ED-B marked and</p> <p>19 admitted)</p> <p>20 JUDGE SHENOY: Now, as to admission of the</p> <p>21 parties, my -- my understanding is that I will be</p> <p>22 admitting as parties to this case the petitioners, which</p> <p>23 would be the parties in the wastewater matter or the --</p> <p>24 so Travis County Water Control and Improvement District</p> <p>25 No. 10 is out -- the City and OPIC and the ED. Anyone</p>
<p style="text-align: right;">Page 6</p> <p>1 Randy Wilburn here on behalf of Petitioners.</p> <p>2 JUDGE SHENOY: Okay.</p> <p>3 MR. WILBURN: All right. With me I have</p> <p>4 John Carlton.</p> <p>5 JUDGE SHENOY: All right.</p> <p>6 MS. WEBB: Gwen Webb. Here with me is</p> <p>7 Stephen Webb and Clark Cornwell, and we're all here on</p> <p>8 behalf of the City of Austin.</p> <p>9 JUDGE SHENOY: In both cases?</p> <p>10 MS. WEBB: In both cases.</p> <p>11 JUDGE SHENOY: Okay. Thank you.</p> <p>12 MR. ARTHUR: Good morning, Judge. Garrett</p> <p>13 Arthur for the Office of Public Interest Counsel.</p> <p>14 JUDGE SHENOY: Thank you.</p> <p>15 MR. OLSON: Good morning, Your Honor. I'm</p> <p>16 Ron Olson representing the Executive Director. With me</p> <p>17 is cocounsel Hollis Henley, and we're representing the</p> <p>18 ED in both cases.</p> <p>19 JUDGE SHENOY: Okay. Thank you.</p> <p>20 Now what I'd like to do in this prehearing</p> <p>21 conference, the agenda that I have, is first to discuss</p> <p>22 jurisdictional and other matters such as admitting</p> <p>23 parties in the -- the second case -143145, then we'll</p> <p>24 talk about consolidation of those two cases, then I --</p> <p>25 I'll address interim rates. There's also a motion to</p>	<p style="text-align: right;">Page 8</p> <p>1 else?</p> <p>2 MS. WEBB: I -- I just would like the</p> <p>3 opportunity to raise jurisdictional issues on behalf of</p> <p>4 the City for purposes of preserving those -- those</p> <p>5 matters for appeal. I don't know if --</p> <p>6 JUDGE SHENOY: Right.</p> <p>7 MS. WEBB: Now, we obviously want to</p> <p>8 be parties.</p> <p>9 JUDGE SHENOY: Right. And -- well, and</p> <p>10 I -- I know that there's a question about which years in</p> <p>11 terms of the jurisdiction.</p> <p>12 MS. WEBB: Right.</p> <p>13 JUDGE SHENOY: Is that -- okay. And --</p> <p>14 and I'll get to that, but right now, I just want to</p> <p>15 admit the parties.</p> <p>16 MS. WEBB: And they -- and everything</p> <p>17 else, but I'll -- I'll do that when we get to it.</p> <p>18 JUDGE SHENOY: Okay. All right. So those</p> <p>19 parties are admitted.</p> <p>20 Now the question is, the petition in the</p> <p>21 wastewater matter was filed in December -- on</p> <p>22 December 12th, 2013. The question that has been raised</p> <p>23 through the City of Austin's filings, and I'm not sure</p> <p>24 that I got it -- a specific response from the</p> <p>25 petitioners -- is of jurisdiction over the 2013 increase</p>

<p style="text-align: right;">Page 9</p> <p>1 versus -- the first increase versus the subsequent 2 increases.</p> <p>3 So let me start with the petitioners 4 exactly. What -- what is your position on that?</p> <p>5 MR. WILBURN: Your Honor, like (inaudible) 6 13.043, there's not a timely set (inaudible). It's -- 7 it's wide open. It doesn't say which (inaudible) at the 8 same time (inaudible).</p> <p>9 JUDGE SHENOY: Okay. Ms. Webb?</p> <p>10 MS. WEBB: And -- and I think that for 11 purposes of this case, it is important to note that 12 December 12th, 2013, which is when the appeal was filed, 13 is after the effective date of the fiscal year 2014 14 rates. So, you know, regardless of -- of what 15 Petitioners think they're entitled to, I think that 16 the -- that the law is clear that you have to -- that 17 the parties can only invoke the jurisdiction of the 18 Commission as to rates which are in effect. They cannot 19 invoke the jurisdiction to question rates which are no 20 longer in effect. That's basic constitutional law that 21 otherwise you're asking for an ex post facto order.</p> <p>22 And I know that -- I know that the ALJ 23 does not agree that -- that the consideration of the ALJ 24 is to constitutional issues, but it is not true that the 25 rules regarding -- that the TCEQ rules regarding when</p>	<p style="text-align: right;">Page 11</p> <p>1 any such statement made before me, so...</p> <p>2 MS. WEBB: All right.</p> <p>3 JUDGE SHENOY: But I understand --</p> <p>4 MS. WEBB: Okay. So we have a 5 disagreement as to whether he said it or whether he 6 didn't. I think Petitioners are saying he didn't say it 7 on the record. I haven't listened to the record from 8 the last hearing. I heard it and -- and that's -- and 9 that's --</p> <p>10 JUDGE SHENOY: Okay.</p> <p>11 MS. WEBB: -- you know, and that's --</p> <p>12 JUDGE SHENOY: I don't -- I don't think I 13 called anyone as a witness, so, I mean, no one said it 14 on the stand in the -- on the record. So anyway -- but 15 I understand your argument about the filing date. 16 What I want to do is hear from the ED on 17 this. So Mr. Olson or Mr. Henley, what -- what is your 18 position?</p> <p>19 UNIDENTIFIED SPEAKER: Your Honor, we -- 20 we -- we looked into it, and -- and there's not a time 21 frame that's laid out in the Code. I mean, it's -- it's 22 certainly not clear on -- on what was intended. We 23 accepted the application for filing based on the fact 24 that there wasn't a time frame in -- in the statute, and 25 that's really as -- as far as we looked at it at this</p>
<p style="text-align: right;">Page 10</p> <p>1 appeals must be filed is not applicable to this case.</p> <p>2 So that's why we're saying that as a legal 3 matter, the -- the -- the -- the -- the Commission's 4 jurisdiction is invoked as to -- as to fiscal year 2014 5 wastewater rates.</p> <p>6 There is -- there is nothing in 13.044 7 which suggests that -- that Petitioners are entitled to 8 appeal rates which are no longer in existence and that 9 they may invoke the resources of the state to do the 10 same. So that's why we're saying the -- the -- the -- 11 the test year for fiscal year 2014 -- the test year for 12 the wastewater complaint was 2014. In fact, Petitioners 13 own expert witness said that when last --</p> <p>14 (Simultaneous discussion)</p> <p>15 UNIDENTIFIED SPEAKER: Objection, Your 16 Honor.</p> <p>17 MS. WEBB: -- when last we met.</p> <p>18 UNIDENTIFIED SPEAKER: This is not on the 19 record. The witness statement was in conversations 20 outside of the hearing.</p> <p>21 JUDGE SHENOY: Oh, and it's not -- 22 (Simultaneous discussion)</p> <p>23 UNIDENTIFIED SPEAKER: To refer to that is 24 completely (inaudible).</p> <p>25 JUDGE SHENOY: Okay. And I'm not aware of</p>	<p style="text-align: right;">Page 12</p> <p>1 point.</p> <p>2 I think with -- with -- without doing some 3 research and really getting into briefing the subject, 4 you know, we accept that for filings, there's not a time 5 frame as -- as there is in other petitions.</p> <p>6 JUDGE SHENOY: I see.</p> <p>7 And does OPIC have any position or 8 comment?</p> <p>9 MR. ARTHUR: Your Honor, we don't have a 10 position on this issue.</p> <p>11 JUDGE SHENOY: Okay.</p> <p>12 MR. WILBURN: Your Honor?</p> <p>13 JUDGE SHENOY: Yes.</p> <p>14 MR. WILBURN: Just real quick. I think 15 that (inaudible).</p> <p>16 JUDGE SHENOY: All right. What we might 17 need to do is take a brief recess so that I can look 18 more closely at it. I don't know that we need to brief 19 it, but we'll -- we'll decide that.</p> <p>20 The next question, though, that I have is 21 whether or not it's both years or just one year. the 22 parties are all still in favor of consolidation. Is 23 that correct? Petitioners?</p> <p>24 MS. WEBB: Yes.</p> <p>25 JUDGE SHENOY: I see everyone nodding</p>

<p style="text-align: right;">Page 13</p> <p>1 except Petitioners, so...</p> <p>2 UNIDENTIFIED SPEAKER: (Inaudible)</p> <p>3 JUDGE SHENOY: No, no, no -- no problem.</p> <p>4 UNIDENTIFIED SPEAKER: (Inaudible)</p> <p>5 JUDGE SHENOY: Yeah, no, everyone was</p> <p>6 nodding except...</p> <p>7 UNIDENTIFIED SPEAKER: Your Honor, I think</p> <p>8 if we're doing the different fiscal years, I think it's</p> <p>9 going to be confusing (inaudible) everybody, from</p> <p>10 attorneys or witnesses or you, trying to figure out what</p> <p>11 was the cost years of water -- wastewater (inaudible).</p> <p>12 JUDGE SHENOY: I -- I'm -- I'm not --</p> <p>13 okay, I'm not sure I agree with that, but I'll -- I'll</p> <p>14 hear from the other parties.</p> <p>15 MS. WEBB: I think that it might be</p> <p>16 reasonable for us to take a brief recess for you to look</p> <p>17 at this and for us to, you know, address efficiency</p> <p>18 concerns and that kind of thing, if that's okay. Could</p> <p>19 we go off the record?</p> <p>20 JUDGE SHENOY: We -- we could do that. I</p> <p>21 mean, my understanding is that largely the witnesses</p> <p>22 would be the same, particularly for the City. And in</p> <p>23 terms of the fiscal years being different, it may be</p> <p>24 solved by just numbers on the Excel spreadsheet. I</p> <p>25 mean, you know, I -- it may be possible to do this.</p>	<p style="text-align: right;">Page 15</p> <p>1 MS. WEBB: -- we can address these</p> <p>2 concerns.</p> <p>3 JUDGE SHENOY: And absolutely, I want to</p> <p>4 give you a chance to -- to do that.</p> <p>5 But -- and do I need to hear anything from</p> <p>6 the ED or OPIC? Does your opinion change? Because</p> <p>7 you -- you indicated that you supported consolidation.</p> <p>8 UNIDENTIFIED SPEAKER: Right. I -- I</p> <p>9 think as far as our work is -- is concerned, I think it</p> <p>10 would be the same whether it's consolidated or separate.</p> <p>11 JUDGE SHENOY: Okay. And no different for</p> <p>12 OPIC?</p> <p>13 MR. ARTHUR: Correct.</p> <p>14 JUDGE SHENOY: Okay. Let's -- let's go</p> <p>15 off the record. I want to give you time to -- to</p> <p>16 discuss this, and I need some time to look into it as</p> <p>17 well. So I will -- I'll say half an hour. That may be</p> <p>18 too much, but I -- I want to make sure it's enough. So</p> <p>19 I'll come back at 10:45. All right?</p> <p>20 We are off the record.</p> <p>21 (Discussion off the record)</p> <p>22 JUDGE SHENOY: All right. We are back on</p> <p>23 the record after a half-hour recess for research and</p> <p>24 discussion by the parties. So I understand the parties</p> <p>25 have something to report. And would that be --</p>
<p style="text-align: right;">Page 14</p> <p>1 UNIDENTIFIED SPEAKER: I appreciate the</p> <p>2 optimism of that. However, the financial data and the</p> <p>3 other information that backs up the City's annual</p> <p>4 cost -- they go through this process every year. It's</p> <p>5 different information every year. And to present that,</p> <p>6 we would essentially be presenting two cases to you if</p> <p>7 it's two different fiscal years. The testimony will not</p> <p>8 be the same for one fiscal year versus the other.</p> <p>9 MR. WEBB: You -- Your Honor --</p> <p>10 JUDGE SHENOY: Yes.</p> <p>11 MR. WEBB: -- we think that's a bit of an</p> <p>12 overstatement. I don't think they're going to be</p> <p>13 presenting two different cases. It's essentially the</p> <p>14 same -- same issues. The -- the issues on which we</p> <p>15 disagree is not the correctus (phonetic) of numbers</p> <p>16 necessarily. It's more the manner in which the City of</p> <p>17 Austin makes rates, that un -- unless the petitioners</p> <p>18 would suggest to you that Austin made rates using one</p> <p>19 method in 2013, it then changed in 2014, then perhaps</p> <p>20 that's two different cases -- not two different cases,</p> <p>21 just different numbers for different fiscal (inaudible).</p> <p>22 JUDGE SHENOY: Okay.</p> <p>23 MS. WEBB: So maybe if we -- if we go off</p> <p>24 the record --</p> <p>25 JUDGE SHENOY: Right.</p>	<p style="text-align: right;">Page 16</p> <p>1 Ms. Webb, are you -- okay. Go ahead.</p> <p>2 MS. WEBB: Your Honor, while we were off</p> <p>3 the record, we talked about the matters of efficiency</p> <p>4 and judicial economy, et cetera, that -- that we have</p> <p>5 raised and the petitioners have raised. And -- and we</p> <p>6 agreed that while the City of Austin would continue to</p> <p>7 question the jurisdiction of the Commission as to 2013</p> <p>8 wastewater rates, for purposes of efficiency and</p> <p>9 judicial economy, we would use 2013 as the year for you</p> <p>10 to look at for both water and wastewater rates.</p> <p>11 JUDGE SHENOY: Okay.</p> <p>12 MS. WEBB: So -- so I -- in that regard,</p> <p>13 the -- the issue of the Commission's jurisdiction as to</p> <p>14 2014 -- as to 2013, rather, wastewater rates, I'd like</p> <p>15 to carry that forward and just to -- and just to file a</p> <p>16 brief on the jurisdictional issues in the same way that</p> <p>17 we -- that we did before with the understanding that,</p> <p>18 you know, you have our agreement that -- for your -- for</p> <p>19 your consideration --</p> <p>20 JUDGE SHENOY: Right.</p> <p>21 MS. WEBB: -- may stick to the same year</p> <p>22 for both.</p> <p>23 JUDGE SHENOY: Okay.</p> <p>24 MS. WEBB: As Mr. Webb pointed out, you</p> <p>25 know, looking at similar policies and -- and issues for</p>

<p style="text-align: right;">Page 17</p> <p>1 the Austin water utility in ratemaking of water and 2 wastewater in 2013 and two thousand (inaudible). 3 JUDGE SHENOY: Okay. Any elucidation or 4 any gloss on -- 5 (Simultaneous discussion) 6 UNIDENTIFIED SPEAKER: (Inaudible) 7 JUDGE SHENOY: Okay. Very good. And we 8 have that on the record, so that's what we will do. 9 And, Ms. Webb, any briefing that you want 10 to provide on jurisdiction will be preserved as part of 11 the record. Jurisdiction can be raised posthearing as 12 well. The Commission can decide to take that up, but 13 they will have before them at least a PFD that gives 14 the -- the findings and principles on which they could 15 make a decision, which I appreciate the parties sorting 16 that out. 17 All right. 18 MS. WEBB: And, Your Honor, on the other 19 jurisdictional questions which are similar to the ones 20 that I raised for the water utility, in -- including 21 the -- the water appeal, including the application of 22 the Commission's Chapter 291 rules (inaudible) in the 23 interest of saving time, could I provide those in a 24 written brief following this preliminary hearing? 25 JUDGE SHENOY: Is that so your -- on</p>	<p style="text-align: right;">Page 19</p> <p>1 My order that I will issue shortly after 2 this prehearing will set interim rates for water at the 3 rate prior to the first increase. However, no interim 4 rates will be set for wastewater. 5 The next issue that I want to address is 6 the motion to compel. Now, I need some further 7 instruction from the parties so I understand exactly 8 where your dispute is. 9 So if the City wants to discuss its motion 10 and then the petitioners respond, I'll probably reserve 11 ruling on that and put it in the order. And then after 12 that, we can either take a break for everyone to talk 13 about schedule, or if you're ready, we'll -- we'll go 14 for it then. 15 MS. WEBB: I -- I just -- before we leave 16 the -- the question of interim rates, I am wondering if 17 there is -- you know, just before in this hearing, you 18 mentioned that I haven't taken any evidence, and -- and 19 then talking about what Jay Joyce had said, you said, 20 Well, that wasn't on the record. 21 And so -- and we have -- to my knowledge, 22 we don't have any numbers in the record which would 23 address the concerns that Petitioners raised on interim 24 rates or -- or, in fact, the -- the fiscal year 2012 25 rates of the City of Austin. So I'm wondering, what do</p>
<p style="text-align: right;">Page 18</p> <p>1 interim rates? Is that -- 2 MR. WILBURN: I think she wants to re-urge 3 her briefs on jurisdiction (inaudible). 4 JUDGE SHENOY: Oh, I see. You can 5 certainly preserve that in -- in a brief. Yes. 6 MS. WEBB: Okay. So I'll -- I'll just 7 file that posthearing. 8 JUDGE SHENOY: That -- that would make 9 sense. 10 MS. WEBB: Okay. 11 JUDGE SHENOY: Okay. So in that case, 12 I've admitted the parties and -- in the wastewater case. 13 And at this point, it looks like there's agreement on 14 consolidation and on the use of 2013 as the reference 15 year. So I will issue an order consolidating those -- 16 these two cases for -- for hearing. 17 Now, on the issue of interim rates, I know 18 that there's a dispute about jurisdiction to set those 19 rates that has been raised in the -- in the City's 20 briefing. I do find authority under the water code 21 Section 13.044 and 30 TAC 291.29(D), the -- the rule 22 says that -- that an interim rate can be set with just 23 oral argument. I've had now both oral argument and 24 written briefing, and I don't want to belabor this any 25 further.</p>	<p style="text-align: right;">Page 20</p> <p>1 we have -- you said we've had -- we've had two 2 preliminary hearings, but they haven't been evidentiary 3 hearings, and they haven't been -- and so, yes, we 4 can -- we can have interim rates without -- we can have 5 interim rates without -- without having a -- with a 6 hearing, but you have to have some evidence. 7 And so I'm wondering: Where does the -- 8 where does the evidence come that meets the standard 9 that you announced in Order No. 3 that was a substantial 10 bar that wasn't met before and that is now met without 11 any additional evidence by -- by Petitioner? So I don't 12 know it's -- it's an evidentiary question. Where is 13 that -- where is that coming from -- 14 JUDGE SHENOY: Well -- 15 MS. WEBB: -- procedural (inaudible)? 16 JUDGE SHENOY: -- I understand the 17 question. The way I read the rule is that it can be -- 18 determination can be made and consideration can be 19 limited to oral arguments. I've had oral arguments. 20 And the other point that I would make is 21 that time is an element in considering the possibility 22 for hardship to a utility. And that is something that 23 I've considered as well. So that's -- that's the order. 24 It'll -- it'll come out shortly after this. And, like I 25 said, I don't want to belabor that more.</p>

<p style="text-align: right;">Page 21</p> <p>1 MS. WEBB: Well --</p> <p>2 MR. WEBB: We also -- we want to make sure</p> <p>3 we have some clarification. Since we're no longer in</p> <p>4 2013 rates for water as well, how are you saying you</p> <p>5 want the interim rates to apply? Do you want the rates</p> <p>6 to go down to 2012 rates, or do you want the City of</p> <p>7 Austin to apply the absence of the decrease from 2012 to</p> <p>8 2013 to the 2014 rates?</p> <p>9 JUDGE SHENOY: The rate that would -- will</p> <p>10 be in effect is the rate that was in effect immediately</p> <p>11 prior to the first rate increase, which would -- which</p> <p>12 was in February of 2013. Right.</p> <p>13 MR. WEBB: Okay. So does that mean that</p> <p>14 this -- the City of Austin, under your order, is not</p> <p>15 allowed to increase the rates from, say, the 2012 level</p> <p>16 to the 2014? Because there is no appeal of the 2014</p> <p>17 water rates --</p> <p>18 JUDGE SHENOY: Right.</p> <p>19 MR. WEBB: -- in effect.</p> <p>20 JUDGE SHENOY: And -- and I understand</p> <p>21 that. The only thing before me is this one. Right?</p> <p>22 That's the only rate that I'm addressing. So how it --</p> <p>23 how it plays out further, I'm not going to comment on</p> <p>24 it.</p> <p>25 MR. WEBB: So the -- the City -- well,</p>	<p style="text-align: right;">Page 23</p> <p>1 So that's why it's important that we</p> <p>2 haven't taken -- we haven't taken any evidence on the</p> <p>3 numbers or anything, but I understand -- I -- I guess</p> <p>4 I -- I guess I will have to wait and see what your order</p> <p>5 says and then -- and then we'll talk about it, because</p> <p>6 it's not clear to me what exactly you're saying or what</p> <p>7 you will be saying in the order that you issue --</p> <p>8 JUDGE SHENOY: Okay.</p> <p>9 MS. WEBB: -- awarding interim rates.</p> <p>10 JUDGE SHENOY: And -- and that -- I mean,</p> <p>11 all I'm going to talk about is the rate in effect prior</p> <p>12 to the first increase. That's --</p> <p>13 MR. WEBB: Right.</p> <p>14 JUDGE SHENOY: -- what's before me.</p> <p>15 MR. WEBB: Right.</p> <p>16 JUDGE SHENOY: So -- yes.</p> <p>17 UNIDENTIFIED SPEAKER: I hate to muddy the</p> <p>18 water, Your Honor, but that is all (inaudible). Rule</p> <p>19 No. 13.044, clearly the City can't increase rates until</p> <p>20 we get this rate case resolved (inaudible). I believe</p> <p>21 that the City's reliance on 13.044 which talked about</p> <p>22 (inaudible) set rates for the city just (inaudible)</p> <p>23 relies on the fact that retail customers inside the city</p> <p>24 who are not (inaudible) inside the city, there's no</p> <p>25 prohibition that you or the Commission set rates for the</p>
<p style="text-align: right;">Page 22</p> <p>1 that's -- we -- we have to be able to give some</p> <p>2 direction to our client as to how to apply --</p> <p>3 JUDGE SHENOY: Right.</p> <p>4 MR. WEBB: -- this.</p> <p>5 When they sent out rates, they -- they can</p> <p>6 apply the 2014 rates as if the rate increase from 2012</p> <p>7 to 2013 did not happen, but they --</p> <p>8 JUDGE SHENOY: I'm -- you know, I'm not</p> <p>9 going to comment on that.</p> <p>10 MR. WEBB: Okay.</p> <p>11 JUDGE SHENOY: That's not before me.</p> <p>12 What's before me is the one increase, and that's --</p> <p>13 that's where I'm setting interim rates.</p> <p>14 UNIDENTIFIED SPEAKER: (Inaudible) Your</p> <p>15 Honor.</p> <p>16 MS. WEBB: And -- and let me -- let me</p> <p>17 also say that -- I mean, of course, we're in total</p> <p>18 disagreement on this; but one of the things that -- and</p> <p>19 I know that -- I know that Petitioners don't believe</p> <p>20 that any of the TCEQ rules apply or any of the other</p> <p>21 sections of Chapter 13 apply, but the Commission is</p> <p>22 prohibited from setting rates which do not allow a -- a</p> <p>23 municipal utility to collect enough for operating</p> <p>24 expenses and collect service costs. That's a -- that's</p> <p>25 a -- that's a prohibition.</p>	<p style="text-align: right;">Page 24</p> <p>1 City (inaudible).</p> <p>2 JUDGE SHENOY: Okay. And you just want to</p> <p>3 make that statement for the record. That -- that's</p> <p>4 fine. It doesn't change what I'm doing one way or the</p> <p>5 other.</p> <p>6 Let's move -- move on.</p> <p>7 Have the parties talked at all about a</p> <p>8 schedule before we talk about this motion to compel?</p> <p>9 UNIDENTIFIED SPEAKER: No.</p> <p>10 JUDGE SHENOY: Okay. We -- we need a</p> <p>11 schedule. We need to not leave here without a schedule.</p> <p>12 MR. WEBB: We will.</p> <p>13 JUDGE SHENOY: Okay. All right. But</p> <p>14 let's take up the motion to compel first. I want to</p> <p>15 understand from the City the motion and then</p> <p>16 Petitioners' response.</p> <p>17 MR. WEBB: Okay. Your Honor, with respect</p> <p>18 to the motion to compel, you may have noticed that we</p> <p>19 deliberately drafted it in a more summary fashion</p> <p>20 because we are well aware how much the administrative</p> <p>21 law judges love to get involved in discovery --</p> <p>22 JUDGE SHENOY: Right.</p> <p>23 MR. WEBB: -- issues. So rather than</p> <p>24 to --</p> <p>25 JUDGE SHENOY: Sure.</p>

<p style="text-align: right;">Page 25</p> <p>1 MR. WEBB: -- lay them all out in 2 individual numbers. If you look at Page 3 of our motion 3 to compel, we talked about the -- the specific items of 4 both the interrogatories and the request for production 5 that we served on all four of the petitioners in the 6 water rate appeal and talked about a specific type of an 7 objection that was made, a continuing objection that was 8 made, throughout all of the objections. 9 Incidentally, just for the record, we 10 requested certain information in the form of Austin's 11 first set of interrogatories to all four petitioners. 12 We did the same in -- with respect to a request for 13 production of documents. We did that timely. In 30 14 days, we got from all four petitioners only objections. 15 There were absolutely -- there was -- no questions were 16 answered whatsoever. No information was provided 17 whatsoever. 18 And the continuing theme that went 19 throughout the objections is that this -- and -- and I'm 20 paraphrasing even more than I did in my motion to 21 compel -- this is not about us. This is about the issue 22 of just and reasonable rates of the City of Austin. 23 Nothing that we do one way or the other is relevant to 24 any issue in this case, we object to it, and we don't 25 want to provide it.</p>	<p style="text-align: right;">Page 27</p> <p>1 in this case -- and they referred to it -- Item 6 of his 2 affidavit that is attached to their first amended 3 original petition, the reason why we are here presumably 4 is because Mr. Joyce thinks that excessive cash funding 5 of water capital improvements artificially raise the 6 revenue requirement. The revenue stability fund is 7 excessive. In other words, I could go on. I've cited 8 them in the motion for compel. 9 In other words, the policies and 10 procedures that the City of Austin uses in this case 11 are -- are going to be discussed and whether they are 12 reasonable. Now, reasonable in a vacuum? Reasonable 13 only for the City of Austin? Does the City of Austin -- 14 is the City of Austin the only water utility in the 15 state of Texas that sets wholesale rates or water 16 utility rates or funds capital improvements like water 17 treatment Plant 4, a big issue for the petitioners? Of 18 course not. 19 Whether something is reasonable or just is 20 a matter of opinion, and it is a matter of an industry 21 standard, and it is a matter of the reasonableness of 22 doing certain things. For example, do we cash fund all 23 of our capital improvements and then pass that on to 24 ratepayers, or do we put everything on a credit card 25 and -- and do none of it and then threaten the financial</p>
<p style="text-align: right;">Page 26</p> <p>1 That is essentially the ruling that we -- 2 that -- the direction that we need from Your Honor on 3 how this case will proceed, because it's not really just 4 a discovery dispute at all. What it is is how the 5 parties perceived in this case will proceed where they 6 presumably ask questions only about our numbers or our 7 policies or our procedures, make criticisms of them, and 8 then will only address that -- what Austin does only in 9 the hearing. Well, that is not how the City of Austin 10 perceives this case will proceed. 11 The issue is just and reasonable. And the 12 statute and the standards have all kinds of things like 13 excessive this and -- and reasonable that throughout; 14 not just the statute, but the first amended original 15 petition filed by the parties make issues of the 16 excessiveness of one procedure or the -- or the 17 reasonableness of another procedure. 18 And even though in their request for 19 protective order they mention how we brought in some -- 20 they -- they called it a convoluted reference to their 21 expert, Jay Joyce's, affidavit and then said, quite 22 unnecessarily, that Jay Joyce's affidavit was not 23 offered in discovery. That wasn't the point at all. 24 In their first amended original petition, 25 they said that those things that are going to be issues</p>	<p style="text-align: right;">Page 28</p> <p>1 viability of our utility? 2 Well, the City of Austin has its own 3 policies and made its own choice and decided we're going 4 to do a little bit of this and we're going to do a 5 little bit of that. And the question before you is: 6 Is that reasonable? Is that just and reasonable? 7 So we think that with the relatively low 8 bar in a discovery request that it's only -- we're only 9 looking for information that is reasonably calculated to 10 lead to the discovery of admissible evidence that we're 11 not talking about whether or not it's necessarily 12 relevant what these utilities do or not. It is about 13 whether we could be able to make an argument, given that 14 we have the burden of proof in this case, that what 15 we're doing is no less reasonable or unreasonable than 16 what they're doing that our method of presumably these 17 parties are using industry standards. Maybe they're 18 not. Maybe the reason why they're not is the reason why 19 they appealed the rate. Maybe that's the reason why 20 they think that what we're doing is unreasonable. 21 Well, Your Honor, that is a matter that we 22 will sort out in the hearing. But before we get to the 23 hearing, while we are drafting our prefiled testimony, 24 while we are drafting our cross-examination of their 25 prefiled testimony, we want the full scope of discovery</p>

<p style="text-align: right;">Page 29</p> <p>1 tools. We are -- we should no more be precluded from 2 looking at all of the -- looking for evidence that could 3 lead to the discovery of admissible evidence in the 4 forms that we have sought thus far than we -- that they 5 should be excused from, say, answering every other 6 question when we cross-examine them. It's -- it's just 7 a matter of fairness.</p> <p>8 The whole purpose of discovery is to avoid 9 any kind of trial by ambush. We want to know who it is 10 that is asking the question and be given a fair 11 opportunity to ask it. And so if -- if the petitioners 12 think that their business -- their practices, cannot be 13 an issue in this case, we need some direction from you, 14 Your Honor.</p> <p>15 As -- as to the rest of their objections, 16 they talk about -- we -- we have too many questions in 17 one answer -- we -- we gave a response to that -- I 18 mean, we included that in our motion to compel because 19 we think that their counting is -- it's completely 20 antithetical to the case law and the rules.</p> <p>21 The -- the applicable rule of civil 22 procedure directs what is a separate -- separate issue, 23 and the case law that we cited there also directs what 24 is a separate issue. We disagree with that. However, 25 we think that that -- we would like a ruling on that.</p>	<p style="text-align: right;">Page 31</p> <p>1 Commission for a rate increase. A retail utility would 2 be subject to, okay, you got to put your application in, 3 prove it up.</p> <p>4 But just like a retail utility case, we 5 wouldn't allow the retail utility to have discovery over 6 its customers and what their business practices were or 7 what their personal banking practices were because it's 8 irrelevant to the determination of how the cost of 9 service was set by the retail utility. That's exactly 10 what Austin's asking to do here.</p> <p>11 Our customers aren't setting wholesale 12 rates. We aren't bound by that same constriction that 13 Austin is in this appeal of wholesale rates for 14 customers who are outside the city limits.</p> <p>15 And so the rules of evidence, 401 says 16 that in order to be relevant, the evidence has to have a 17 tendency to make an existence of a fact that is of 18 consequence to the determination of the action more 19 probable or less probable than it would be without the 20 evidence. I will submit to you that there is no amount 21 of how does one of these districts deal with its 22 allocation of cost from which it has complete discretion 23 (inaudible). The City does. That's not relevant to the 24 City following the rules regarding establishing its 25 rates based on a cost of service for its wholesale</p>
<p style="text-align: right;">Page 30</p> <p>1 Perhaps you can answer that; perhaps you can't. We 2 think those kinds of objections can best be worked out 3 with the party.</p> <p>4 But this issue of the operations of our 5 petitioners is something that we need to get a clear -- 6 get clear direction on in resuming this case.</p> <p>7 JUDGE SHENOY: I understand. Thank you. 8 Any response? Okay.</p> <p>9 UNIDENTIFIED SPEAKER: Your Honor, so this 10 is really a matter of burden of proof type issue. We 11 concede that the Commission has absolutely no authority 12 over the City's retail rates. Right? So the City can 13 make whatever decision they wanted to to set their 14 retail rates at whatever level, including funding things 15 that don't relate to utility service. 13.042 of the 16 water code says, Commission's got no jurisdiction over 17 that. So the voters can go vote in or out the council 18 members they want to set their rates.</p> <p>19 Wholesale rates are a different beast. 20 Wholesale rates must be just and reasonable. And in 21 order to do so, they must be based on a cost of service. 22 In order to help you make a decision on 23 cost of service, we want to apply a certain set of rules 24 to how that's required to happen, much the same as we 25 would do if a retail utility were coming before the</p>	<p style="text-align: right;">Page 32</p> <p>1 customers.</p> <p>2 Rule 402 says if it's not relevant, it's 3 not admissible. If -- if the evidence they're seeking 4 through discovery isn't relevant, we shouldn't have to 5 disclose it.</p> <p>6 And if -- if we were in the case that was 7 a more typical case for the Commission to consider, like 8 a retail public utility hearing where the retail public 9 utility has the burden of proof just like the City does 10 in this de novo appeal, you would never consider letting 11 the utility ask the customers, Give us all your 12 financial records. How do you do this? What's your 13 business practice? You're a business owner. Tell me 14 how you run your business so that we can prove that we 15 run our business fine. That's not the way it works.</p> <p>16 The Commission's rules deal with cost of 17 service and what's just and reasonable. That inquiry 18 into how the City does that is not -- it doesn't help 19 you to know what these utility districts do.</p> <p>20 And so our argument is it's irrelevant. 21 It's -- it's -- and therefore we shouldn't have to 22 produce it. We shouldn't have to answer those 23 questions. I think that's laid out in our arguments.</p> <p>24 With regard to the number of questions, so 25 the relevant case law on that says that if -- they</p>

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1 have -- the -- the items listed within an interrogatory
2 have to be logically or factually related to the primary
3 interrogatory, and I'll leave that to you to go through
4 and look. It's fairly clear in our listing out of the
5 various questions that were asked that there are
6 multiple questions within these, and we need guidance
7 for doing this.

8 There's a limited number of
9 interrogatories. You know, for us to go make factual
10 inquiries about each of these things they've asked for
11 is a burden in an amount of time. If you were to
12 determine it's relevant -- we don't think it's relevant,
13 but if it were, that burden of going in and answering
14 each of those factual inquiries, which are separate, as
15 we've argued for many of the parts of these questions,
16 we think is excessive in terms of what's allowed under
17 the rules for interrogatory.

18 JUDGE SHENOY: Okay. I just need to take
19 time to look much more closely at this. The response
20 has -- was just filed a day or so ago, so I'm going to
21 reserve ruling on it.

22 I have now your -- the parties'
23 explanations, which I appreciate, and I will go back and
24 look more closely at this and issue a ruling on that in
25 the next order.

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1 doing a secret until we get to -- until after we make
2 our cut and file our -- our -- our testimony, and then I
3 guess we won't even know until we get to trial. That's
4 what we're -- that's -- that's what -- that's what we're
5 getting -- intended to do.

6 Every -- in every case before the State
7 Office of Administrative Hearings, a party has the
8 burden of proof, whether it's the Applicant or the
9 Respondent in this -- in this case. But I've never
10 heard it said that, But we, as Petitioners, are entitled
11 not to provide any information, not to assist in the
12 search for truth that is supposed to be going on here.
13 We did discovery with our -- with our -- in our previous
14 rate appeals. I just don't -- I just frankly don't
15 understand the argument that because a party has the
16 burden of proof, they're not entitled to discovery.

17 So that's -- that's -- that's just
18 something that -- and if you -- and I would also say
19 that -- oh, I understand that they filed their -- that
20 they filed their response, I guess, Monday or so, and
21 you haven't had time to review that.

22 JUDGE SHENOY: Right. Right. So --
23 and -- and it's complex. I want to spend some time on
24 that --

25 MS. WEBB: Okay.

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1 MR. WILBURN: Thank you, Your Honor.
2 MS. WEBB: Okay. The only -- the only
3 caveat that I would apply to -- to what -- to what has
4 been said so far is that, you know, this isn't the first
5 wholesale rate case to come before the State Office of
6 Administrative Hearings. This isn't the first rate case
7 involving the City of Austin. And -- and, you know,
8 having the burden of proof is one thing, and the burden
9 of proof includes such things as industry standards.
10 We've got two sets of ratepayers here.
11 We've got the ratepayers of the municipal utilities who
12 have filed the appeal, and we've got the ratepayers of
13 the City of Austin who are the wholesale customers who
14 have filed this appeal.

15 The -- the rules and regulations of the
16 Texas Commission on Environmental Quality and the Public
17 Utility Commission offer scant guidance on what might be
18 included as reasonable cost expenses and -- and --
19 and -- and -- and reserves. And so with that in mind,
20 it is absolutely to me unreasonable to say that the way
21 this trial is going to be conducted, unlike any other,
22 is that what Petitioners are going to do is lay behind
23 the log and keep what -- keep what they think and what
24 their -- and what their issues are and how they -- and
25 how they are considering what the City of Austin is

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1 JUDGE SHENOY: -- more so --
2 UNIDENTIFIED SPEAKER: Your Honor, just
3 real quick, I'd like to address some things (inaudible).

4 JUDGE SHENOY: Okay. All right.

5 UNIDENTIFIED SPEAKER: (Inaudible) This
6 information is (inaudible) determining if the City's
7 increase are just and reasonable for these customers.
8 That's the question. We're saying it's not -- it's not
9 relevant to that question (inaudible). Mr. Webb talked
10 about specific matter (inaudible) policies; you know,
11 it's a matter of Texas law, just and reasonable, by
12 definition, is (inaudible). (Inaudible) that -- that's
13 not what this case is about. This case is whether
14 Austin's rates are based on its cost of service. That's
15 it.

16 JUDGE SHENOY: Okay. And I -- I -- I
17 understand there's disagreement on this. So, you know,
18 I -- I -- I have it all in mind now, so I will consider
19 all of it.

20 UNIDENTIFIED SPEAKER: Okay.

21 MS. WEBB: Thank you.

22 JUDGE SHENOY: The last thing I had on my
23 agenda is the schedule. So I know that in the
24 previously adopted schedule from Order No. 4 had a
25 number of dates which I assume will be the same types of

<p style="text-align: right;">Page 37</p> <p>1 dates and deadlines that we'll need to have for the --</p> <p>2 the hearing going forward. So what I'd like to do is</p> <p>3 give you a chance to talk and come up with something on</p> <p>4 your own, something that's reasonable given the dates</p> <p>5 that we've already talked about about transfer to the</p> <p>6 PUC being on September 1st and -- and all of that, which</p> <p>7 Mr. Olson, if you remind me, Mr. Henley will be --</p> <p>8 MR. OLSON: Yes.</p> <p>9 JUDGE SHENOY: -- counsel on it going</p> <p>10 forward after September? Okay.</p> <p>11 MR. OLSON: That's right.</p> <p>12 JUDGE SHENOY: Okay. All right. Great.</p> <p>13 So let's go off the record.</p> <p>14 Do you need anything from me before you</p> <p>15 discuss dates? No?</p> <p>16 MS. WEBB: Well, I guess one thing that</p> <p>17 would be helpful to do is that we're assuming that that</p> <p>18 we will have a hearing on this consolidated matter in</p> <p>19 late January, early February, as we have --</p> <p>20 JUDGE SHENOY: Right.</p> <p>21 MS. WEBB: With that guidance and knowing</p> <p>22 what -- you know, about people's schedule, I think</p> <p>23 (inaudible).</p> <p>24 JUDGE SHENOY: Yeah. If this is set in</p> <p>25 January, you know, I have some small conflicts, but</p>	<p style="text-align: right;">Page 39</p> <p>1 record so that we're clear. The schedule is going to be</p> <p>2 as follows: The City will file its rate package on</p> <p>3 July 15th, 2014. Discovery will open on that date,</p> <p>4 according to the parties. If there's anything else</p> <p>5 going on in between now and that date, that is subject</p> <p>6 to the agreement of the parties. I'm not going to be</p> <p>7 involved in that. But the parties have said that</p> <p>8 after -- on and after July 15th, 2014, they wish the</p> <p>9 20-day response rule to be in effect, so I will</p> <p>10 stipulate that in -- in the -- include that in the</p> <p>11 order. And City will also prefile its direct case on</p> <p>12 that date, July 15th, 2014.</p> <p>13 Petitioners and OPUC will prefile their</p> <p>14 direct case on -- on October 6th, 2014. Prior to that</p> <p>15 filing -- so beginning September 6, 2014, there will be</p> <p>16 a quiet period, which the parties have explained their</p> <p>17 understanding is that no discovery will be provided; no</p> <p>18 answers are due.</p> <p>19 The ED will prefile their direct case on</p> <p>20 December 12th, 2014. The same quiet period will apply</p> <p>21 from November 12th, 2014.</p> <p>22 Objections to prefiled direct cases are</p> <p>23 due December 22nd, 2014. Discovery closes</p> <p>24 December 30th, 2014. Responses are due January 5th,</p> <p>25 2015. City will prefile its rebuttal case January 30th,</p>
<p style="text-align: right;">Page 38</p> <p>1 those -- those can be cleared. I mean, this case will</p> <p>2 take precedence, and we'll -- we'll make it happen.</p> <p>3 Yeah. I think that's true of all the potential</p> <p>4 conflicts on -- on my calendar. So we'll -- we -- I'll</p> <p>5 work around what the parties can agree to on that.</p> <p>6 All right. So let's go off the record.</p> <p>7 I'm sorry?</p> <p>8 UNIDENTIFIED SPEAKER: Should we call you,</p> <p>9 or do you want to come back?</p> <p>10 JUDGE SHENOY: If you can call, that would</p> <p>11 be great.</p> <p>12 UNIDENTIFIED SPEAKER: What's the number?</p> <p>13 (Discussion off the record)</p> <p>14 JUDGE SHENOY: All right. We are back on</p> <p>15 the record at about 12:25. The parties have presented a</p> <p>16 proposed hearing schedule for the water and wastewater</p> <p>17 rate appeals. The cases will be consolidated, as I</p> <p>18 discussed earlier, and that'll be memorialized in the</p> <p>19 next order which will come out probably in about a week.</p> <p>20 And that order will also include a ruling on the motion</p> <p>21 to compel and state the interim rates ruling. So it</p> <p>22 wouldn't go into effect until the -- the order comes</p> <p>23 out, but I -- I wanted to state my order on the record</p> <p>24 earlier.</p> <p>25 So let me just read these dates into the</p>	<p style="text-align: right;">Page 40</p> <p>1 2015. Objections are due to the prefiled rebuttal on</p> <p>2 February 6th, 2015. And responses are due on</p> <p>3 February 10th, 2015, and that is also the date on which</p> <p>4 there will be a prehearing conference.</p> <p>5 The hearing on the merits will be held</p> <p>6 February 12th through February 25th, 2015. And unless</p> <p>7 for some reason it's decided that it needs to be held in</p> <p>8 some other location, it'll be held here at SOAH's</p> <p>9 offices.</p> <p>10 Have I missed anything? Yes.</p> <p>11 MS. WEBB: There is an error on the -- on</p> <p>12 the schedule. The -- no, there isn't. No, there isn't.</p> <p>13 I'm sorry.</p> <p>14 JUDGE SHENOY: Okay. But -- so I've read</p> <p>15 the dates into the record, and I will memorialize all of</p> <p>16 this in my order. If there's any error that I've</p> <p>17 captured in -- in this, I'll expect the parties to let</p> <p>18 me know.</p> <p>19 MR. ARTHUR: Judge, I would like to</p> <p>20 clarify one thing. Regarding the OPUC prefiled --</p> <p>21 prefiling a direct case, I -- I just want to note that</p> <p>22 is -- that's a different office than mine, under the</p> <p>23 Public Utility Commission. I have no idea whether they</p> <p>24 will be prefiling a direct case, but that does appear to</p> <p>25 be the appropriate time if they are going to do that. I</p>

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1 just want you to know that so that -- you're not going
2 to be getting -- you're not going to get a prefiled
3 direct case from OPIC. I don't know --

4 JUDGE SHENOY: Right.

5 MR. ARTHUR: -- that you'll get one from
6 OPUC.

7 JUDGE SHENOY: Right. Well, whether -- I
8 mean, when the -- when the transfer to PUC happens, my
9 jurisdiction doesn't change.

10 MR. ARTHUR: Right.

11 JUDGE SHENOY: So you're making agreement
12 to which someone else will be bound, yes, but so be it.

13 (Laughter)

14 JUDGE SHENOY: And we'll -- you know, if
15 that's a problem, we'll deal with it when it comes up,
16 but thanks for pointing that out.

17 Anything else from anyone?

18 (No response)

19 JUDGE SHENOY: No. All right. Thank you
20 all very much. We covered a lot, and I appreciate
21 everyone sticking through it. We are off the record.

22 (Audio proceedings concluded)

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1 C E R T I F I C A T E

2 STATE OF TEXAS)

3 COUNTY OF TRAVIS)

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

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

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

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24

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Lorrie A. Schnoor
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SOAH Docket No. 473-14-5138 / PUC Docket No. 42857
SOAH Docket No. 473-14-5138 / PUC Docket No. 42867

Petition of North Austin Municipal Utility District No. 1

Telephonic Prehearing Conference

09/17/2014



7800 N. Mopac Expressway, Suite 120
Austin, Texas 78759
512-474-2233

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1 SOAH DOCKET NO. 473-14-5138
 2 SOAH DOCKET NO. 582-13-4617 (PRIOR)
 3 PUC DOCKET NO. 42857

3 PETITION OF NORTH AUSTIN } STATE OFFICE
 4 MUNICIPAL UTILITY DISTRICT }
 5 NO. 1, NORTHTOWN MUNICIPAL }
 6 UTILITY DISTRICT, TRAVIS COUNTY }
 7 WATER CONTROL AND IMPROVEMENT }
 8 DISTRICT NO. 10 AND WELLS } OF
 9 BRANCH MUNICIPAL UTILITY }
 10 DISTRICT FROM THE RATEMAKING }
 11 ACTIONS OF THE CITY OF AUSTIN }
 12 AND REQUEST FOR INTERIM RATES }
 13 IN WILLIAMSON AND TRAVIS } ADMINISTRATIVE HEARINGS
 14 COUNTIES }

10 SOAH DOCKET NO. 473-14-5138
 11 SOAH DOCKET NO. 582-14-3145 (PRIOR)
 12 PUC DOCKET NO. 42887

12 PETITION OF NORTH AUSTIN } STATE OFFICE
 13 MUNICIPAL UTILITY DISTRICT }
 14 NO. 1, NORTHTOWN MUNICIPAL }
 15 UTILITY DISTRICT, AND WELLS }
 16 BRANCH MUNICIPAL UTILITY } OF
 17 DISTRICT FROM THE RATEMAKING }
 18 ACTIONS OF THE CITY OF AUSTIN }
 19 AND REQUEST FOR INTERIM RATES }
 20 IN WILLIAMSON AND TRAVIS } ADMINISTRATIVE HEARINGS
 21 COUNTIES }

18 TELEPHONIC PREHEARING CONFERENCE
 19 Wednesday, September 17, 2014

20 BE IT REMEMBERED THAT at 10:08 a.m., on
 21 Wednesday, the 17th day of September 2014, the
 22 above-entitled matter came on for hearing at the State
 23 Office of Administrative Hearings, William P. Clements,
 24 Jr., Building, 300 West 15th Street, Room 407B, Austin,
 25 Texas, before PRATIBHA J. SHENOY and BETH BIERMAN,
 Administrative Law Judges, and the following proceedings
 were reported by William C. Beardmore, Certified
 Shorthand Reporter.

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1 PROCEEDINGS
 2 WEDNESDAY, SEPTEMBER 17, 2014
 3 (10:08 a.m.)
 4 JUDGE BIERMAN: Okay. Let's go on the
 5 record. This is SOAH Docket No. 473-14-5138. As you
 6 know, this is the new docket number for this case.
 7 It's the same docket number for both
 8 cases. The prior SOAH docket numbers were 582-13-4617
 9 and 582-14-3145. For the record, my name is Beth
 10 Bierman. I'm the Administrative Law Judge -- or one of
 11 the Administrative Law Judges assigned to this case.
 12 With me today is Judge Pratibha Shenoy.
 13 Today's date is the 17th of September 2014, and the time
 14 is a little bit after 10:00 in the morning and we're
 15 holding this telephone prehearing conference from the
 16 State Office in Austin, Texas.
 17 As usual, we will start with appearances
 18 of the parties beginning with the Petitioners.
 19 MR. WILBURN: Yes, Your Honor. Randy
 20 Wilburn and John Carlton for Petitioners.
 21 JUDGE BIERMAN: Okay. And for the City?
 22 MS. WEBB: For the City of Austin, Gwen
 23 Webb and Stephen Webb of Webb & Webb for the City of
 24 Austin.
 25 JUDGE BIERMAN: And any other parties or

Page 2

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 2
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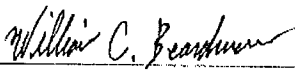
1 persons who want to make an appearance today?
 2 MS. WEBB: I'll state for the record that
 3 Tony Bagwell of Utility Financial Consultants, Inc. --
 4 JUDGE BIERMAN: Okay.
 5 MS. WEBB: -- is here.
 6 JUDGE BIERMAN: And for the PUC?
 7 MR. HENLEY: Yes. This is Hollis Henley
 8 with the PUC Staff, and I have with me observing the
 9 hearing Jacob Lawler who's also an attorney here at the
 10 PUC.
 11 JUDGE BIERMAN: Okay. Have any parties
 12 heard from a representative of OPUC as to whether or not
 13 OPUC was going to try to intervene in this case?
 14 MR. HENLEY: No. This is Hollis --
 15 JUDGE BIERMAN: I'm sorry, sir. Say that
 16 again.
 17 MR. WILBURN: Your Honor, this is Randy
 18 Wilburn. No, I have not heard anything from OPUC.
 19 JUDGE BIERMAN: Okay. Okay. As you know,
 20 we've -- we were required under the PUC rule to convene
 21 a telephonic prehearing conference in this case
 22 subsequent to the transfer to the PUC of jurisdiction.
 23 The rule sets out matters that we must
 24 discuss today; the first being whether 30 Texas
 25 Administrative Code Chapter 80 procedural rules or the

<p style="text-align: right;">Page 5</p> <p>1 PUC's procedural rules should apply to this case, the 2 PUC and SOAH filing requirements, any other matters that 3 may arise as a result of the transfer, and there is also 4 a pending motion to compel and a request for additional 5 days to file prefiled testimony filed by the 6 Petitioners.</p> <p>7 So we will be bringing up these matters 8 today. Other than those four matters, is there anything 9 else the parties anticipate wanting to discuss today?</p> <p>10 MS. WEBB: Yes, Your Honor. This is Gwen 11 Webb, and I have a question about -- I have a couple of 12 questions that should probably come under the heading of 13 which rules apply to this hearing.</p> <p>14 So I just want to make sure that, you 15 know, if we're going to take them in that order I'll 16 bring those forward at this time -- at that time.</p> <p>17 JUDGE BIERMAN: Okay. When we start that 18 discussion, Ms. Webb, you obviously be allowed an 19 opportunity to discuss your concerns.</p> <p>20 MS. WEBB: Okay. Thank you.</p> <p>21 JUDGE BIERMAN: Is there anything else 22 that the parties anticipate bringing up today that we 23 can note prior to starting?</p> <p>24 JUDGE SHENOY: Okay. And this is Judge 25 Shenoy. Before we start with the list of items that</p>	<p style="text-align: right;">Page 7</p> <p>1 we should have had 24 copies, and that's one of the 2 concerns we have with whether or not we've got to still 3 be using this.</p> <p>4 JUDGE BIERMAN: Well, we'll address that 5 in a moment, Mr. Webb.</p> <p>6 JUDGE SHENOY: And thank you, Mr. Webb, 7 for pointing out that you did use the PUC's system. 8 That -- we appreciate that. It did show up as being 9 filed at SOAH; so it wasn't entirely clear to us.</p> <p>10 But for the future let's all remember that 11 everything needs to be filed at the PUC. Two things I 12 want to point out. There is a PUC citation guide that 13 is available on the PUC's website that indicates how the 14 Commission wishes orders and any other filings to be 15 formatted.</p> <p>16 That's something that you should refer to, 17 and there's also a function on the PUC website which you 18 may already have made use of. But if you haven't, it is 19 a resource that you might want to take advantage of.</p> <p>20 You can set up an e-mail update so that 21 anything that is filed in the docket numbers that are of 22 interest to you will automatically be sent to you by 23 e-mail, and that way you can stay on top of everything 24 that happens in this case.</p> <p>25 And as far as when you go on to SOAH's</p>
<p style="text-align: right;">Page 6</p> <p>1 Judge Bierman talked about, just a couple of things: I 2 might have missed it, but Mr. Henley, I don't know if I 3 heard from you. Have you heard from OPUC and whether 4 they intend to join this case?</p> <p>5 MR. HENLEY: I have not heard from OPUC.</p> <p>6 JUDGE SHENOY: Okay. Thank you. And then 7 a couple of things that I just want to state for the 8 record so the parties remember: I think that the motion 9 to compel and the response may have been filed only on 10 SOAH's system.</p> <p>11 That needs to be changed. Everything 12 needs to be filed at the PUC starting September 1st. So 13 we're well into that. We'll talk about it a little 14 more, but I just want to make sure that everyone 15 remembers that, and the filing time deadline is 16 different there -- it's 3:00 p.m. -- and the number of 17 copies are set forth in the rule. We'll of course, 18 expect you to look at that.</p> <p>19 And also I just wanted to --</p> <p>20 MR. WEBB: Judge Shenoy, Stephen Webb for 21 the City of Austin. We can't speak for the Petitioners' 22 motion to compel, but the City of Austin did file its 23 reply of utilizing the PUC's requirements.</p> <p>24 We hand delivered to the PUC 12 copies. 25 We were told that because there are two docket numbers</p>	<p style="text-align: right;">Page 8</p> <p>1 system, up until now you have been able to go onto 2 SOAH's system to search what has been filed previously 3 by any party or by the ALJs.</p> <p>4 You will still be able to do that for 5 anything that was issued or filed before September 1st, 6 but after that only the orders that we issue will show 7 up on our website.</p> <p>8 They will also show up on the PUC website, 9 but that's a limitation on what you'll be able to see on 10 our website, and you will need to look at the PUC's 11 website for the full set of documents.</p> <p>12 And then one other housekeeping point: 13 Prior to this the prehearing conference we have not had 14 a Court Reporter present with us.</p> <p>15 So for any proceeding, meaning all of the 16 prehearing conferences we have had up to this date, the 17 audio recording that was prepared by myself is the 18 official record.</p> <p>19 However, for this prehearing conference 20 and for any other prehearing at which we have a Court 21 Reporter actually present the Court Reporter's 22 transcript will be the official record. All right. 23 I'll turn it back over to Judge Bierman.</p> <p>24 JUDGE BIERMAN: Okay. So let's start out 25 by talking about the procedural rules that will apply in</p>

<p style="text-align: right;">Page 9</p> <p>1 this case. And Judge Shenoy and I have talked about it, 2 and we believe that this case is sufficiently far along 3 that we don't want to change anything that's already 4 been happening with respect to the procedural rules thus 5 far. 6 So we were intending to follow the rules 7 that have been in place in this case since the 8 beginning. And I know, Ms. Webb, you already said that 9 you had a concern. 10 Can you tell us what your concern is? 11 MS. WEBB: Yes. Okay. Just to make 12 matters clear, these cases have been consolidated. 13 JUDGE BIERMAN: That is correct. 14 MS. WEBB: However, there are two PUC 15 docket numbers for them and -- but there's only one, I 16 notice now, SOAH docket for it. So I'm wondering as to 17 filing if it's sufficient under 271, the PUC rules, 18 which say you have to file 12 copies, to file 12 copies 19 as opposed to 24? 20 JUDGE BIERMAN: Well, I am suspecting that 21 the reason that they saw two dockets -- they required 24 22 copies, Ms. Webb, is that there are two PUC docket 23 numbers, and I suspect that they're going to continue to 24 require those numbers for each separate docket number. 25 The question may be whether or not we can</p>	<p style="text-align: right;">Page 11</p> <p>1 change the rules that apply to this case at this time. 2 But in the order you referenced Chapter 22 of the PUC 3 rules and Chapter 24 of the PUC rules. 4 So are those the rules that you believe 5 apply to this case? Are those the rules that you are 6 going to be applying to this case from this point on? 7 JUDGE BIERMAN: Well, the documents and 8 pleadings have to be -- have to meet the PUC's filing 9 requirements which are in Rule 22. 10 MS. WEBB: Okay. And what about Chapter 11 24? 12 JUDGE BIERMAN: Well, obviously, our 13 authority to -- and our requirement to hold this 14 prehearing conference came under Chapter 24. 15 What we're really referring to is the 16 discovery deadlines and the matters that have been set 17 forth in Judge Shenoy's prior orders in this case. 18 MS. WEBB: Okay. And so we -- and we're 19 also continuing under the -- under the issues set out in 20 Order No. 9 which memorialized our last prehearing 21 conference which says that after conferring the parties 22 agree that they will use Fiscal Year 2013 as the 23 reference here in a consolidated administrative hearing 24 that all -- that those orders -- that that is still the 25 case.</p>
<p style="text-align: right;">Page 10</p> <p>1 consolidate those two PUC docket numbers, and at this 2 point I don't know the answer to that question. 3 MS. WEBB: Okay. So I just -- I -- that's 4 fine, but I can still file 24 copies. I tried to do a 5 test run with the request for the Court Reporter to see 6 how this would work, but that's fine. 7 Then the other question is -- yes, I 8 understand there's a 3:00 deadline and that -- so 12 9 copies have to be delivered to the PUC. Does that mean 10 that the 3:00 deadline applies both to uploading on the 11 site -- the website and to delivering the copies to the 12 PUC home headquarters? 13 JUDGE BIERMAN: Ms. Webb, my answer to 14 that is, I don't really want to give you any legal 15 advice as to how you're supposed to file at the PUC. 16 I know some of the rules are different and 17 I -- perhaps you can talk with the Staff attorney after 18 this proceeding to find out exactly what the PUC expects 19 as to, you know, whether the 3:00 p.m. applies to both 20 of those types of filings. 21 MS. WEBB: Okay. 22 JUDGE BIERMAN: Do you have anymore 23 concerns? 24 MS. WEBB: Then another question I had was 25 that your comments about the rules; you didn't want to</p>	<p style="text-align: right;">Page 12</p> <p>1 JUDGE SHENOY: This is Judge Shenoy. None 2 of that has changed. That's correct, Ms. Webb. 3 MS. WEBB: I think that is -- that that 4 answers as much as you're willing to answer on the 5 Chapter 22 and Chapter 24 on rules, and we'll just work 6 with the PUC, and I will say that they've been very 7 helpful so far in making the transition. 8 JUDGE BIERMAN: Okay. Well, if there are 9 any -- you know, if any questions come up and you need 10 to ask us a question, obviously you can file a motion 11 and we'll reply or have a prehearing conference if you 12 request a prehearing conference. So let us -- 13 MR. WEBB: Judge Bierman and Judge Shenoy, 14 it occurs to me that if the validity of a filing is 15 determined by the PU -- someone at the PUC and that the 16 two of you are the Administrative Law Judges to the case 17 that there could be some conflict in whether there is 18 substantial compliance -- that type of thing. 19 Do you anticipate any issues with that? 20 JUDGE BIERMAN: I don't think -- Mr. Webb, 21 I don't anticipate any issues with that, because I 22 expect -- we both expect all the parties to read 23 carefully the rules regarding the PUC filing 24 requirements. 25 I understand that it's difficult in the</p>

<p style="text-align: right;">Page 13</p> <p>1 middle of the case to have jurisdiction transferred to 2 another agency. But we both expect the parties to do 3 their best, and it's not that a person at the PUC is 4 determining the validity of a filing. 5 They have set a 3:00 p.m. deadline. I 6 think that's what you're referring to. So you need to 7 make sure that you meet that deadline. 8 MR. WEBB: Okay. 9 JUDGE BIERMAN: Okay. Is there 10 anything -- 11 MR. WEBB: Thank you. 12 JUDGE BIERMAN: -- is there anything else 13 with regard to Item No. 1 that we -- Item No. 1 or No. 14 2, the filing requirements, that we need to talk about? 15 MR. WILBURN: Yes, Your Honor. Randy 16 Wilburn. I have a quick follow-up question. 17 JUDGE BIERMAN: Can you state your name 18 louder, sir? 19 MR. WILBURN: Is that better? 20 JUDGE BIERMAN: I'm sorry. Can you state 21 your name louder, sir? 22 MR. WILBURN: Yeah. This is Randy 23 Wilburn. 24 JUDGE BIERMAN: Okay. That's better. 25 What's your question, sir?</p>	<p style="text-align: right;">Page 15</p> <p>1 MR. WILBURN: Okay. Thank you. 2 JUDGE BIERMAN: Okay. 3 JUDGE SHENOY: All right. So the last 4 item that we want to talk about is the motion to compel 5 and the response. 6 We don't think we need any oral argument 7 on this. We've gotten both filings and we've had a 8 chance to look at them. We intend to issue an order 9 tomorrow that summarizes our discussion here. Of 10 course, the Court Reporter's transcript will be the 11 official record, but we intend to issue an order that 12 summarizes for our purposes what happened here today. 13 That order will contain more detail. But 14 at this point, I just want to state that we are in 15 agreement that we intend to grant the motion to compel, 16 and details about that will follow. 17 MR. WILBURN: Thank you, Your Honor. 18 MS. WEBB: Your Honor, with respect to 19 the -- with respect to the motion to compel, I'm not 20 sure exactly how that -- that can affect the City of 21 Austin in that -- and that the person involved in 22 responding to -- responding to these -- for production 23 these 135 requests for production -- or 114 requests for 24 production assumed that -- that Order No. 9 and the 25 transcript was correct.</p>
<p style="text-align: right;">Page 14</p> <p>1 MR. WILBURN: The PUC procedural rules 2 have some very interesting requirements for discovery, 3 especially with regard to objections. 4 Are we going to follow the Rules of Civil 5 Procedure or PUC's rules regarding discovery? I just 6 want to make sure that's clear from here forward. 7 JUDGE SHENOY: Okay. And this is Judge 8 Shenoy. I believe it's clear, but just so we're 9 absolutely crystal on this, the discovery rules for the 10 PUC will not apply. The rules that we have been working 11 under thus far will continue to apply. 12 The most important thing for you to look 13 at in the PUC's rule is filing because that -- you have 14 to comply with the PUC's rules. However, we have 15 latitude to -- 16 MR. WILBURN: -- the record -- 17 JUDGE SHENOY: -- we have latitude to -- 18 MR. WILBURN: -- motion to compel was 19 filed under the PUC's requirements with the PUC. We did 20 file the number of copies and on the exchange. That's 21 listed as Item No. 102 on the exchange. 22 JUDGE SHENOY: Okay. That's great. Thank 23 you. And like I said, we have the latitude to choose 24 which rules apply. We have chosen to not apply the 25 PUC's discovery rules.</p>	<p style="text-align: right;">Page 16</p> <p>1 They have -- some of them have taken their 2 time away from the office following the adoption of the 3 budget and the -- and with the assurance that the -- 4 that the orders issued by the Administrative Law Judges 5 would prevail, and at this time there is no -- I'm not 6 sure how you're going to set forth what -- I guess I'm 7 just saying that because of the summer that the City of 8 Austin staff has had, they arranged their -- their other 9 matters to happen after the adoption of the Fiscal Year 10 2015 budget for the City of Austin and Austin Water 11 Utility and during the alleged quiet period for the -- 12 for this -- for the Petitioners in this case. So -- 13 JUDGE BIERMAN: Okay. Ms. Webb -- 14 MS. WEBB: -- so there -- so I guess I'm 15 just saying that -- making you-all aware of, as you 16 detail exactly how you will address granting the 17 Petitioners' motion to compel that -- that -- that there 18 are potential issues there. 19 Thank you. 20 JUDGE BIERMAN: Okay. Ms. Webb, if the 21 City staff had a mistaken view of an order issued by 22 Judge Shenoy, that is the result of the mistaken view 23 taken by the City's attorneys, and we are not 24 responsible for that. 25 MR. WEBB: Ms. Bierman -- and I -- I'm</p>

<p style="text-align: right;">Page 17</p> <p>1 sorry. Judge Bierman --</p> <p>2 JUDGE BIERMAN: Mr. Webb -- Mr. Webb, I'm</p> <p>3 not taking argument from you right now. I'm talking to</p> <p>4 Ms. Webb.</p> <p>5 MR. WEBB: Okay.</p> <p>6 HS. WEBB: All right. I certainly dispute</p> <p>7 that comment and -- that you made regarding a mistaken</p> <p>8 interpretation, and I think that the -- that the</p> <p>9 transcript -- because, you know, I know you said that</p> <p>10 the -- that the -- only the audio recording is a -- is</p> <p>11 the official record. However, there's no -- there's no</p> <p>12 way to introduce the audio recording for review by the</p> <p>13 parties. So --</p> <p>14 JUDGE BIERMAN: Ms. Webb.</p> <p>15 HS. WEBB: -- my point is --</p> <p>16 JUDGE BIERMAN: Ms. Webb -- Ms. Webb,</p> <p>17 stop. You are not going to win this one. Judge Shenoy</p> <p>18 understands what the ruling intended and said.</p> <p>19 I -- it's too bad that you had a mistaken</p> <p>20 view of that order, but we don't have a mistaken view of</p> <p>21 that order.</p> <p>22 We know exactly what it said.</p> <p>23 HS. WEBB: Then no further comment.</p> <p>24 JUDGE BIERMAN: Okay. Is there anything</p> <p>25 else that we need to discuss today before we adjourn?</p>	<p style="text-align: right;">Page 19</p> <p>1 MR. WEBB: Oh, so your ruling granting the</p> <p>2 motion to compel is, if I understand it from that</p> <p>3 comment, Judge Bierman, a partial granting at this time</p> <p>4 of granting -- requiring us to file our responses, I</p> <p>5 assume, forthwith and not necessarily granting the</p> <p>6 extension?</p> <p>7 JUDGE BIERMAN: We are not granting an</p> <p>8 extension today during the prehearing conference.</p> <p>9 MR. WEBB: All right.</p> <p>10 HS. WEBB: And, Judge Bierman, my only</p> <p>11 point in stating that -- in discussing the -- or one of</p> <p>12 my point in discussing the City of Austin availability</p> <p>13 is to make you aware that -- that there are scheduled</p> <p>14 conflicts in terms of this discovery request.</p> <p>15 So that may be something that you have to</p> <p>16 take into account as well --</p> <p>17 JUDGE BIERMAN: Well --</p> <p>18 HS. WEBB: -- in considering any request</p> <p>19 by Petitioners for an extension of time.</p> <p>20 JUDGE BIERMAN: We will look at the motion</p> <p>21 and the response. Okay?</p> <p>22 Is there anything else we need to discuss</p> <p>23 today before we adjourn?</p> <p>24 MR. WILBURN: No, Your Honor.</p> <p>25 HS. WEBB: No. I don't think so, Your</p>
<p style="text-align: right;">Page 18</p> <p>1 MR. WILBURN: No, Your Honor -- well, just</p> <p>2 one quick note. I guess because of this delay in</p> <p>3 getting responses from the City, it's really impacting</p> <p>4 our ability to prepare our prefiled testimony for</p> <p>5 Petitioners. And, again, this is Randy Wilburn.</p> <p>6 And we would propose that we make some</p> <p>7 slight adjustments to the hearing schedule. We can do</p> <p>8 that in writing if that would be more convenient.</p> <p>9 MR. WEBB: Judge Bierman, Stephen Webb.</p> <p>10 In response to that, that is one of the issues that</p> <p>11 we -- and concerns that we had because of -- the motion</p> <p>12 to compel has been granted.</p> <p>13 I don't know whether you also meant to</p> <p>14 grant their requested one-day extension for every day</p> <p>15 that -- that they -- that our responses are allegedly</p> <p>16 late. We also raised some rule issues regarding that</p> <p>17 request for an extension.</p> <p>18 We also don't know what that does to the</p> <p>19 overall schedule and whether this extension of time,</p> <p>20 because of our mistaken understanding of the language of</p> <p>21 Order No. 9, is going to impact us or not.</p> <p>22 JUDGE BIERMAN: The overall schedule is</p> <p>23 not changing. We may consider and we're going to take</p> <p>24 under advisement the request for additional time for</p> <p>25 Petitioners' prefiled testimony.</p>	<p style="text-align: right;">Page 20</p> <p>1 Honor.</p> <p>2 JUDGE BIERMAN: Okay. Hearing none,</p> <p>3 then -- do you have anything else -- we are adjourned.</p> <p>4 Thank you very much.</p> <p>5 (Proceedings concluded at 10:34 a.m.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

1		Page 21
2	CERTIFICATE	
3	STATE OF TEXAS)	
4	COUNTY OF TRAVIS)	
5	I, William C. Beardmore, Certified Shorthand	
6	Reporter in and for the State of Texas, do hereby	
7	certify that the above-mentioned matter occurred as	
8	hereinbefore set out.	
9	I FURTHER CERTIFY THAT the proceedings of such	
10	were reported by me or under my supervision, later	
11	reduced to typewritten form under my supervision and	
12	control and that the foregoing pages are a full, true,	
13	and correct transcription of the original notes.	
14	IN WITNESS WHEREOF, I have hereunto set my hand	
15	and seal this 29th day of September 2014.	
16		
17		
18	WILLIAM C. BEARDMORE	
19	Certified Shorthand Reporter	
20	CSR No. 918 - Expires 12/31/14	
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