



Control Number: 42867



Item Number: 76

Addendum StartPage: 0

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

RECEIVED  
2014 NOV -5 AM 11:18  
PUBLIC UTILITY COMMISSION  
FILING CLERK

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

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

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

CITY OF AUSTIN'S REPLY TO PETITIONERS' RESPONSE TO MOTION TO  
STRIKE PREFILED TESTIMONY OF PETITIONERS NORTH AUSTIN MUD NO. 1,  
NORTHTOWN MUD, TRAVIS COUNTY WATER CONTROL AND IMPROVEMENT  
DISTRICT NO. 10, AND WELLS BRANCH MUD

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW, the City of Austin ("Austin"), Respondent in the referenced consolidated administrative appeal of Austin's 2013 wholesale water and wastewater rates to Petitioners, by and through its attorneys, Webb & Webb, Attorneys at Law, and files this, its Reply to Petitioners' Response to Motion to Strike Prefiled Testimony of Petitioners North Austin

Municipal Utility District No. 1 (“North Austin”), Northtown Municipal Utility District (“Northtown”), Travis County Water Control and Improvement District No. 10 (“WCID No 10”), and Wells Branch Municipal Utility District (“Wells Branch”). In support thereof, Austin would respectfully state as follows:

## **I. BACKGROUND**

1. On October 27, 2014, City of Austin (“Austin”), Respondent filed its Motion to Strike Prefiled Testimony of Petitioners North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. 10, and Wells Branch Municipal Utility District (“Motion to Strike”).
2. On October 31, 2014, Petitioners filed their Response to City of Austin’s Motion to Strike Prefiled Testimony of Petitioners North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. 10, and Wells Branch Municipal Utility District (“Response”).
3. The City of Austin’s Motion to Strike is anything but frivolous. Petitioners’ counsel have all but admitted most of the facts upon which Austin based its Motion and yet assert that Austin has no right to object to deficiencies in Petitioners’ filing. If anything, it is Petitioners who have made a frivolous claim for sanctions and attorneys fees.
4. A key element in Austin’s Motion to Strike is the fact that there was no evidence that Petitioners satisfied the 3:00 p.m. filing deadline required by P.U.C. Proc. R. §§22.71(i) or the formal filing requirements of the Public Utility Commission (“PUC”). In Petitioners’ Response they include an affidavit stating that they satisfied the deadline to the PUC. Petitioners’ Response ignores some of the requirements of P.U.C. Proc. R. §22.74(a) and the standing practice in this case, thus far. Pleadings from the City of Austin have been served on Petitioners’ counsel at the time that they have been filed with the PUC. This is the purpose of the certificate of service requirement of §22.74(d); to advise the PUC, the Administrative Law Judges, and the parties of the timeliness of a filing and the timeliness of service of the pleading to the parties. When a pleading is filed

with the PUC without a certificate of service, it fails to comply with clear filing requirements and it fails to inform the parties whether *any* of the filing requirements have been satisfied. For example, Petitioners' Response is completely silent with respect to Petitioners' failure to comply with P.U.C. Proc. R §22.72(e), pertaining to the obligation of a pleading to be signed by the attorney of record. Petitioners have not even attempted to correct this additional error. Under P.U.C §22.75(b) Petitioners' October 17, 2014 filing is only entitled to be considered "conditionally accepted for filing" because of its failure to comply with §22.72(e). *Arguably, Petitioners have yet to actually file their prefiled testimony.* Moreover, Petitioners' failure to follow P.U.C. Proc. R §22.74(d) is certainly not "harmless" to the City of Austin if it would be required to pay Petitioners' attorneys for the costs of their attempt to comply with simple PUC filing requirements after the fact. Petitioners' nonconforming pleading is entitled to be stricken, in some forums. [See TRAP9.4(j)] Austin is entitled to object to the Petitioners' non-conforming pleading.

5. Petitioners statement at Paragraph 5 of their response cannot be taken seriously. The ALJ's did not have to state in any order a *time* deadline for a filing in this case--§22.71 imposes the time deadline. The ALJ's were clear about the applicability of PUC filing requirements to this base. Austin assumes that *all* PUC filing requirements would be enforced.

### **III. REQUEST FOR RELIEF**

WHEREFORE PREMISES CONSIDERED, the City of Austin respectfully requests that the Direct Testimony of David Malish, Direct Testimony of Thomas C. Arndt, Direct Testimony of Jay Joyce, and Petitioners' Exhibits 1-4, which was presumably filed on behalf of North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. 10, and Wells Branch Municipal Utility District be stricken in its entirety; that Petitioners' request for sanctions be denied in its entirety, and for such other and further relief that Austin may show itself entitled.

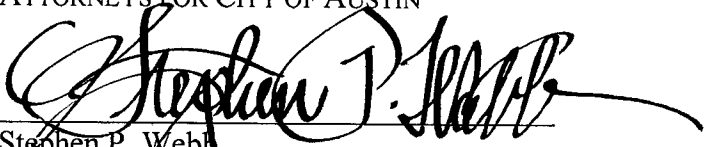
Respectfully submitted,

**KAREN KENNARD,**  
City Attorney

**D. CLARK CORNWELL**  
Assistant City Attorney

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

By:

  
Stephen P. Webb  
State Bar No. 21033800  
[s.p.webb@webbwebblaw.com](mailto:s.p.webb@webbwebblaw.com)

Gwendolyn Hill Webb  
State Bar No. 21026300  
[g.hill.webb@webbwebblaw.com](mailto:g.hill.webb@webbwebblaw.com)

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via hand delivery, facsimile, electronic mail, overnight mail, US mail and/or Certified Mail Return Receipt Requested on all parties whose names appear on the mailing list below on this 5<sup>th</sup> day of November, 2014.

FOR THE PUBLIC UTILITY COMMISSION:

1701 N. Congress Avenue, 7<sup>th</sup> Floor  
PO Box 13326  
Austin, Texas 78711-3326  
Via Electronic Upload and Hand Delivery

FOR THE ADMINISTRATIVE LAW JUDGES:

Honorable Pratibha J. Shenoy  
Administrative Law Judge

Honorable Beth Bierman  
Administrative Law Judge

State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 504  
Austin, Texas 78701  
Phone: 512-475-4993  
Fax: 512-322-2061  
Via Electronic Upload

FOR THE SOAH DOCKET CLERK:

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

FOR PETITIONERS:

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

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

FOR THE PUC STAFF:

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

  
STEPHEN P. WEBB