



Control Number: 42867



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House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014.

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

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

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 NOTICE OF FISCAL YEAR 2012 WHOLESALE WATER RATE

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the City of Austin ("Austin"), by and through its attorneys, Webb & Webb, Attorneys at Law, and files this, its Notice of Fiscal Year 2012 Wholesale Water Rate, in the above styled and docketed consolidated contested case hearing. In support thereof, Austin would respectfully state as follows:

I. INTRODUCTION AND BACKGROUND

1. On May 29, 2014, the Administrative Law Judge ("ALJ") issued Order No. 9, purporting to memorialize the May 14, 2014 Prehearing Conference. Among other things, Order No. 9 contains the following statement regarding Interim Rates:

The Commission or ALJ is not required by Rule 291.29(d) to detail an evidentiary basis for a decision to set interim rates. (*See*, Order No. 9, Page 5, Second Paragraph)

It is unclear to Austin from this statement whether the ALJ believes that this contested case hearing is governed by SOAH regulations and the Administrative Procedures Act or not. But, Austin does suggest that failure to provide an evidentiary or factual basis for a ruling which is adverse to a party, and which under the terms of Order No. 9 is "final or may become final"¹ is clearly reversible error. Moreover, the lack of factual or legal support for the Order cannot be cured by Austin's providing the missing evidentiary bases, after the Order has been issued.

2. In Order No. 9, the ALJ set interim wholesale water rates to be effective May 29, 2014, at the rate in effect prior to the February 2013 "first phase"² of the rate increase. The ALJ set the wholesale water rates as follows, with a note to the parties to inform her if the rates were not correct:

| PETITIONER | MONTHLY FIXED RATE | VOLUME RATE |
|---------------------------|--------------------|-------------|
| Wells Branch MUD | \$744.00 | \$3.46 |
| Travis County WCID No. 10 | \$690.00 | \$3.97 |
| Northtown MUD | \$1,050.00 | \$3.57 |
| North Austin MUD No. 1 | \$1,320.00 | \$3.71 |

3. On May 30, 2014, the City of Austin filed its Notice of Fiscal Year 2012 Water Rate Verification.

¹ See Tex. Gov't. Code §2001.141

² The City of Austin does not set annual wholesale water rates in "phases," as detailed in the Affidavit of Greg Meszaros, Director of Austin Water Utility, attached to Austin's Motion to Consolidate.

4. The City has verified the Fiscal Year 2012 Wholesale Water Rates, and the rates set forth in Order No. 9 are not correct. The correct wholesale water rates for each of the Petitioners are set forth on the chart below:

FISCAL YEAR 2012 WHOLESALE WATER RATES FOR PETITIONERS

| PETITIONER | MONTHLY FIXED RATE | VOLUME RATE |
|---------------------------|--------------------|-------------|
| Wells Branch MUD | \$744.00 | \$3.46 |
| Travis County WCID No. 10 | \$690.00 | \$3.97 |
| Northtown MUD | \$1,250.00 | \$3.57 |
| North Austin MUD No. 1 | \$1,320.00 | \$3.71 |

Because there is no evidence in the record regarding the actual rates of the Water Petitioners, the Order relied on outdated information contained in Petitioners' pleadings which was incorrect at the time it was filed, known by Petitioner Northtown MUD to be erroneous, and not a proper foundation for a ruling adverse to the City of Austin.

II. SUMMARY AND CONCLUSIONS

CONSIDERING THE FOREGOING, THE CITY OF AUSTIN RESPECTFULLY PROVIDES THE FOLLOWING NOTICES to the Honorable Administrative Law Judge:

1. The correct wholesale water rates charged by the City of Austin in Fiscal Year 2012 were as set forth above in the chart entitled, "FISCAL YEAR 2012 WHOLESALE WATER RATES FOR PETITIONERS;" and
2. The City of Austin will obtain a transcript of the Prehearing Conferences held on April 2, 2014 and May 14, 2014 before providing any further challenge to the directives issued by the ALJ within Order No. 9.

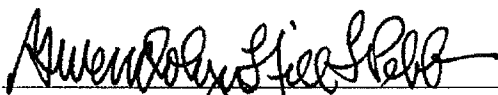
Respectfully submitted,

CITY OF AUSTIN

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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, U.S. mail and/or Certified Mail Return Receipt Requested on all parties whose names appear on the attached mailing list on this the 4th day of June, 2014.

FOR JUDGE SHENOY:

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Administrative Law Judge
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