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PETITION OF THE RATEPAYERS
OF THE RIVER PLACE WATER AND
WASTEWATER SYSTEMS FOR
REVIEW OF A DECISION BY THE
CITY OF AUSTIN TO CHANGE
RETAIL RATES

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PUBLIC UTILITY COMMISSION
BEFORE THE STATE ENGINEER
OF
ADMINISTRATIVE HEARINGS

**COMMISSION STAFF'S OBJECTIONS TO THE CITY OF AUSTIN'S FIRST
REQUEST FOR INFORMATION TO THE STAFF OF THE PUBLIC UTILITY
COMMISSION OF TEXAS**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files these Objections to the City of Austin's First Request for Information to the Staff of the Public Utility Commission of Texas.

I. BACKGROUND

On March 30, 2015, Staff received the City of Austin's First Request for Information (RFIs) to Staff of the Public Utility Commission of Texas. Pursuant to Title 16, TEX. ADMIN. CODE (16 TAC) § 22.144(d), the deadline for filing responses to the RFIs is April 17, 2015. As required by 16 TAC § 22.144(d), Staff and the City of Austin have conferred to attempt to resolve Staff's objections but were unable to reach an agreement on the disputed requests. The deadline for filing objections to the RFIs is April 9, 2015.¹ Therefore, these objections are timely filed.

I. STAFF'S GENERAL OBJECTIONS TO THE CITY OF AUSTIN'S FIRST RFIs

Staff objects to any request for documents or other information protected from disclosure by work product, witness statement, party communication, investigative and/or any other privilege recognized by Texas law.² Staff further objects to the requests that are overly broad,

¹ Pursuant to 16 TAC § 22.144(d), objections to requests for information must be filed within ten calendar days of receipt of the requests.

² TEX. R. CIV. PROC. 192.3, 192.5.

burdensome, irrelevant, not calculated to lead to admissible evidence, available by other sources, inconvenient, harassing, and do not aid in resolution of material issues in the case.³

Most of the City of Austin's RFIs attempt to obtain Staff's direct case before the testimony deadline and constitute an improper "fishing expedition" of non-relevant and privileged information.⁴ The scope of permissible discovery is outlined in Rule 192.3(a) of the Texas Rules of Civil Procedure (TEX. R. CIV. PROC.). Parties may generally obtain discovery regarding "any matter that is *not privileged* and is *relevant* to the subject matter of the pending action . . ."⁵ In comments to that rule, the Supreme Court states that "while the scope of discovery is quite broad, it is nevertheless confined by the subject matter of the case and reasonable expectation of obtaining information that will aid in the resolution of the dispute." Additionally, the power to limit discovery based on the needs and circumstances of each case is expressly recognized in TEX. R. CIV. PROC. 192.4.

Staff is still in the process of discovering and analyzing the facts in this case and has not yet reached a conclusion on the merits of the application. Staff objects to the City of Austin's attempts to obtain Staff's legal theories or direct case before Staff files its direct testimony. While Tex. R. Civ. Proc. 192.3 allows parties to discover "contentions and the factual bases for those contentions," the 1992 Comments to the Section 192 Discovery Rules explain that Tex. R. Civ. Proc. 192.3(j) the rule "does not require more than a basic statement of those contentions and does not require marshalling of evidence." At this time, Staff has put forward no arguments or points and, therefore, no contentions. Staff's contentions will be made at the time its direct testimony and/or statement of position is filed.

Furthermore, discovery which attempts to gather information concerning the "mental impressions developed in anticipation of litigation or for trial by or for a party or a party's

³ TEX. R. CIV. PROC. 191.3(c), 192.4

⁴ "A reference in *Loftin* suggests that interrogatories and depositions may be properly used for a fishing expedition when a request for production of documents cannot. . . . *We reject the notion that any discovery device can be used to 'fish.'*" *K Mart v. Sanderson*, 937 S.W.2d 429 (Tex. 1996) (emphasis added).

⁵ Emphasis added.

representatives” and which consists of Staff’s mental impressions, opinion, conclusions, or legal theories which are protected under Tex. R. Civ. Proc. 192.5(a)(a) and (b)(1) are clearly prohibited.⁶

II. SPECIFIC OBJECTIONS TO CITY OF AUSTIN’S FIRST RFIs

In addition to the general objections applicable to the entirety of the City of Austin’s RFIs as stated above, Staff objects to the City of Austin’s first RFIs as follows:

c. The legal theories and, in general, the factual bases of the responding party’s claims or defenses (the responding party need not marshal all evidence that may be offered at trial).

Staff’s Objections

Staff objects to any request for documents or other information protected from disclosure by work product, witness statement, party communication, investigative and/or any other privilege recognized by Texas law.⁷ Staff has not yet designated anyone as a testifying expert in this case. There is no authority to support the argument that a party can be forced to designate a testifying expert before the party has determined whether to sponsor one or who it will be. Additionally, Staff objects that this request calls for privileged work product, specifically the “material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party’s representatives, including the party’s attorneys, consultants, . . . employees, or agents” or “communications made in anticipation of litigation or for trial.”⁸ This information is protected from disclosure by TEX. R. CIV. PROC. 192.5(b). The legal analysis sought in this RFI requests legal research done by Staff which may or may not form the basis of Staff’s position. The information sought is privileged, not evidence, and not discoverable. Discovery which attempts to gather information concerning the “mental impressions developed in anticipation of litigation or for trial by or for a party or a party’s representatives” and consists

⁶ *In re Exxon*, 208 S.W.3d 70, 75 (Tex. App.—Beaumont 2006).

⁷ TEX. R. CIV. PROC. 192.3, 192.5.

⁸ TEX. R. CIV. PROC. 192.5(a)(1)-(2).

of the attorney's or Staff's mental impressions, opinions, conclusions, or legal theories which are protected under TEX. R. CIV. PROC. 192.5(a)(1) and (b)(1) are clearly prohibited.⁹

Subject to and without waiving the above objections, Staff will respond to this RFI by April 17, 2015.

⁹ *In re Exxon*, 208 S.W.3d 70, 75 (Tex. App.—Beaumont 2006).

f.1. For any testifying expert: The expert's name, address, and telephone number.

Staff's Objections

Staff objects to any request for documents or other information protected from disclosure by work product, witness statement, party communication, investigative and/or any other privilege recognized by Texas law.¹⁰ Staff has not yet designated anyone as a testifying expert in this case. There is no authority to support the argument that a party can be forced to designate a testifying expert before the party has determined whether to sponsor one or who it will be.

Subject to and without waiving the above objection, Staff will respond to this RFI by April 17, 2015.

¹⁰ TEX. R. CIV. PROC. 192.3, 192.5.

f.2. For any testifying expert: The subject matter on which the expert will testify.

Staff's Objections

Staff objects to any request for documents or other information protected from disclosure by work product, witness statement, party communication, investigative and/or any other privilege recognized by Texas law.¹¹ Staff has not yet designated anyone as a testifying expert in this case. There is no authority to support the argument that a party can be forced to designate a testifying expert before the party has determined whether to sponsor one or who it will be.

Additionally, Staff objects that this request calls for privileged work product, specifically the "material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, . . . employees, or agents" or "communications made in anticipation of litigation or for trial." This information is protected from disclosure by TEX. R. CIV. PROC. 192.5(b). This RFI seeks the work product of Staff. The information sought is privileged, not evidence, and not discoverable. Discovery which attempts to gather information concerning the "mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives" and consists of Staff's mental impressions, opinions, conclusions, or legal theories which are protected under TEX. R. CIV. PROC. 192.5(a)(1) and (b)(1) are clearly prohibited.

Subject to and without waiving the above objections, Staff will respond to this RFI by April 17, 2015.

¹¹ TEX. R. CIV. PROC. 192.3, 192.5.

f.3. For any testifying expert: The general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the party to whom this Request is addressed, documents reflecting such information.

Staff's Objections

Staff objects to any request for documents or other information protected from disclosure by work product, witness statement, party communication, investigative and/or any other privilege recognized by Texas law.¹² Staff has not yet designated anyone as a testifying expert in this case. There is no authority to support the argument that a party can be forced to designate a testifying expert before the party has determined whether to sponsor one or who it will be. Additionally, Staff objects that this request calls for privileged work product, specifically the “material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party’s representatives, including the party’s attorneys, consultants, . . . employees, or agents” or “communications made in anticipation of litigation or for trial.”¹³ This information is protected from disclosure by TEX. R. CIV. PROC. 192.5(b). This RFI seeks the work product of Staff. The information sought is privileged, not evidence, and not discoverable. Discovery which attempts to gather information concerning the “mental impressions developed in anticipation of litigation or for trial by or for a party or a party’s representatives” and consists of Staff’s mental impressions, opinions, conclusions, or legal theories which are protected under TEX. R. CIV. PROC. 192.5(a)(1) and (b)(1) are clearly prohibited.¹⁴

Subject to and without waiving the above objections, Staff will respond to this RFI by April 17, 2015.

¹² TEX. R. CIV. PROC. 192.3, 192.5.

¹³ TEX. R. CIV. PROC. 192.5(a)(1)-(2).

¹⁴ *In re Exxon*, 208 S.W.3d 70, 75 (Tex. App.—Beaumont 2006).

f.4.A. If the expert is retained by, employed by, or otherwise subject to the control of the party to whom this Request is addressed: All documents, tangible things, reports, models, or data compilations that have been provided to, review by, or prepared by or for the experts in anticipations of the expert's testimony.

Staff's Objections

Staff objects to any request for documents or other information protected from disclosure by work product, witness statement, party communication, investigative and/or any other privilege recognized by Texas law.¹⁵ Staff has not yet designated anyone as a testifying expert in this case. There is no authority to support the argument that a party can be forced to designate a testifying expert before the party has determined whether to sponsor one or who it will be. When Staff designates a testifying expert in this proceeding, all documents authorized, reviewed, or made available to her related to this proceeding will be made available at that time, consistent with Commission procedural rules.¹⁶

Additionally, Staff objects that this request calls for privileged work product, specifically the "material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, . . . employees, or agents" or "communications made in anticipation of litigation or for trial."¹⁷ This information is protected from disclosure by TEX. R. CIV. PROC. 192.5(b). This RFI seeks the work product of Staff. The information sought is privileged, not evidence, and not discoverable. Discovery which attempts to gather information concerning the "mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives" and consists of Staff's mental impressions, opinions, conclusions, or legal theories which are protected under

¹⁵ TEX. R. CIV. PROC. 192.3, 192.5.

¹⁷ TEX. R. CIV. PROC. 192.5(a)(1)-(2).

TEX. R. CIV. PROC. 192.5(a)(1) and (b)(1) are clearly prohibited.¹⁸ Staff further objects to the request that is overly broad and burdensome, available by other sources, inconvenient, harassing, and does not aid in the resolution of material issues in the case.¹⁹

Subject to and without waiving the above objection, Staff will respond to this RFI by April 17, 2015.

¹⁸ *In re Exxon*, 208 S.W.3d 70, 75 (Tex. App.—Beaumont 2006).

¹⁹ TEX. R. CIV. PROC. 191.3(c), 192.4.

f.4.B. If the expert is retained by, employed by, or otherwise subject to the control of the party to whom this Request is addressed: The expert's current resume and bibliography.

Staff's Objections

Staff objects to any request for documents or other information protected from disclosure by work product, witness statement, party communication, investigative and/or any other privilege recognized by Texas law.²⁰ Staff has not yet designated anyone as a testifying expert in this case. There is no authority to support the argument that a party can be forced to designate a testifying expert before the party has determined whether to sponsor one or who it will be.

Subject to and without waiving the above objection, Staff will respond to this RFI by April 17, 2015.

²⁰ TEX. R. CIV. PROC. 192.3, 192.5.

g. Any indemnity and insuring agreements.

Staff's Objections

Staff objects to this request because the information requested is not of the type at issue in water rate appeals and does not make the existence of any fact that is of consequence more or less probable than it would be without the information. Therefore, Staff objects to this request as irrelevant pursuant to TRE 401 and 402.

Staff further objects to this request as it is overly broad and burdensome, available by other sources, inconvenient, harassing, and does not aid in the resolution of material issues in the case.²¹

Subject to and without waiving the above objection, Staff will respond to this RFI by April 17, 2015.

²¹ TEX. R. CIV. PROC. 191.3(c), 192.4.

h. Any settlement agreements.

Staff's Objections

Staff objects to this request because the information requested is not of the type at issue in water rate appeals and does not make the existence of any fact that is of consequence more or less probable than it would be without the information. Therefore, Staff objects to this request as irrelevant pursuant to TRE 401 and 402.

Staff further objects to this request as it is overly broad and burdensome, available by other sources, inconvenient, harassing, and does not aid in the resolution of material issues in the case.²²

Subject to and without waiving the above objection, Staff will respond to this RFI by April 17, 2015.

²² TEX. R. CIV. PROC. 191.3(c), 192.4.

i. Any witness statements.

Staff's Objections

Staff objects to any request for documents or other information protected from disclosure by work product, witness statement, party communication, investigative and/or any other privilege recognized by Texas law.²³ Staff has not yet designated anyone as a testifying expert in this case. There is no authority to support the argument that a party can be forced to designate a testifying expert before the party has determined whether to sponsor one or who it will be.

Additionally, Staff objects that this request calls for privileged work product, specifically the "material prepared or mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives, including the party's attorneys, consultants, . . . employees, or agents" or "communications made in anticipation of litigation or for trial."²⁴ This information is protected from disclosure by TEX. R. CIV. PROC. 192.5(b). Staff will make its contentions and any applicable work papers, if any, known at the time that its testimony or statement of position is due. This RFI seeks the work product of Staff. The information sought is privileged, not evidence, and not discoverable. Discovery which attempts to gather information concerning the "mental impressions developed in anticipation of litigation or for trial by or for a party or a party's representatives" and consists of Staff's mental impressions, opinions, conclusions, or legal theories which are protected under TEX. R. CIV. PROC. 192.5(a)(1) and (b)(1) are clearly prohibited.²⁵

Subject to and without waiving the above objection, Staff will respond to this RFI by April 17, 2015.

DATE: April 9, 2015

²³ TEX. R. CIV. PROC. 192.3, 192.5.

²⁴ TEX. R. CIV. PROC. 192.5(a)(1)-(2).

²⁵ *In re Exxon*, 208 S.W.3d 70, 75 (Tex. App.—Beaumont 2006).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 9th day of April, 2015 in accordance with 16 TAC § 22.74.

Jessica A. Gray
Jessica A. Gray, Attorney

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