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PUBLIC UTILITY COMMISSION
BEFORE THE
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PETITION OF THE §
RATEPAYERS OF THE §
RIVER PLACE WATER AND §
WASTEWATER SYSTEMS §
APPEALING THE RETAIL WATER §
AND WASTEWATER RATES OF §
THE CITY OF AUSTIN §

STATE OFFICE OF
ADMINISTRATIVE HEARINGS

**PETITIONERS' MOTION TO COMPEL THE CITY OF AUSTIN'S RESPONSES
TO PETITIONERS' FIRST REQUESTS FOR ADMISSIONS AND
INFORMATION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COME NOW, the Ratepayers of the River Place Water and Wastewater Systems ("Ratepayers" or "Petitioners") and file this Motion to Compel the City of Austin's ("City") Responses to Petitioners' First Requests for Admissions and Information¹ and would respectfully show the following:

I. BACKGROUND

Petitioners served their First Requests for Admissions and Information on March 24, 2015. The City responded on April 3, 2015 asserting various objections and refusing to answer certain questions. Prior to filing its objections, the City failed to contact Petitioners to negotiate diligently and in good faith concerning the apparent discovery dispute in accordance with P.U.C. PROC. R. 22.144(d). Nor did its objections include a statement that negotiations were conducted diligently and in good faith. At this time, the parties have not resolved their dispute. Petitioners' Motion to Compel is filed within five (5) business days of the City's objections pursuant to P.U.C. PROC. R. 22.144(e), therefore, this pleading is timely filed.²

¹ Although Petitioners filed First Request for Disclosures, Requests for Admissions and Requests for Information, this Motion only pertains to Petitioners' Requests for Admissions and Information.

²P.U.C. PROC. R. 22.144(e).

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II. CERTIFICATE OF CONFERENCE

As indicated above, the City of Austin failed to contact Petitioners before asserting its objections to the discovery requests propounded. Conversely, undersigned counsel for Petitioners contacted counsel for the City, Ms. Webb on April 10, 2015 at approximately 11:11 a.m. Ms. Webb and undersigned counsel discussed the issues raised by the Petitioners' Motion to Compel but no resolution was reached and the City's objections were not withdrawn. Ms. Webb was notified that Petitioners would proceed to file their Motion to Compel to comply with the PUC filing deadline.

III. MOTION TO COMPEL

A. Petitioners' Request for Admission No. 32

Petitioners' Request for Admission No. 32: Admit that in a rate appeal brought against a municipally owned utility pursuant to section 13.043(b)(3) of the Texas Water Code, the municipally owned utility must show that its rates are just and reasonable.

City's Response: Austin can neither admit nor deny this request at this time, subject to jurisdictional rulings by the Administrative Law Judges.

Petitioners' Response: There is no evidentiary basis for the City's answer, rooted in the procedural rules of the Public Utility Commission of Texas ("PUC") or the State Office of Administrative Hearings ("SOAH") or the Texas Rules of Civil Procedure ("TRCP"). Contrary to TRCP198.2(b), the City's answer is neither an objection nor assertion of privilege, but is evasive. Nor does the City's answer explain in detail the reasons why it could not admit or deny the Petitioners' request. For example, the City does not indicate that it may have lacked information or knowledge after a reasonable inquiry or that any information known or easily obtained by the City was insufficient to enable it to admit or deny Petitioners' Request for Admission. The City's answer is the very type of response which TRCP 198.2(b) clearly prohibits – "an assertion that the

request present as issue for trial is not a proper response.” The Administrative Law Judges (“ALJs”) should therefore deem this request admitted by the City.³

B. Petitioners’ Request for Admission No. 33

Petitioners’ Request for Admission No. 33: Admit that in a rate appeal brought against a municipally owned utility pursuant to section 13.043(b)(3) of the Texas Water Code, the municipally owned utility must show that its rates are not unreasonably preferential, prejudicial, or discriminatory but are sufficient, equitable, and consistent in application to each class of customers.

City’s Response: Austin can neither admit nor deny this request at this time, subject to jurisdictional rulings by the Administrative Law Judges.

Petitioners’ Response: The City provides the same canned response as in its answer to Request for Admission No. 32. Here again, there is no evidentiary basis for the City’s answer, rooted in the procedural rules of the Public Utility Commission of Texas (“PUC”) or the State Office of Administrative Hearings (“SOAH”) or the Texas Rules of Civil Procedure (“TRCP”). Contrary to Rule 198.2(b) of the TRCP, the City’s answer is neither an objection nor assertion of privilege but is evasive. Nor does the City’s answer explain in detail the reasons why it could not admit or deny the Petitioners’ request, because for example, the City may have lacked information or knowledge after a reasonable inquiry or that any information known or easily obtained by the City was insufficient to enable it to admit or deny Petitioners’ Request for Admission. The City’s answer is the very type of response which TRCP 198.2(b) prohibits – “an assertion that the request present as issue for trial is not a proper response.” The ALJs should therefore deem this request admitted by the City.⁴

³ See *State v. Carrillo*, 885 S.W.2d 212, 216 (Tex. App. – San Antonio 1994, no writ).

⁴ *Id.*

C. Petitioners' Request for Information No. 14

Petitioners' Request for Information No. 14: Please provide all documents related to and showing any expenses directly billed to the Austin Water Utility from other City departments for calendar years 2012 and 2013.

City's Response: Respondent objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects to the request as being made for the purpose of harassment.

Petitioners' Response: Expense documentation from 2012 and 2013 is directly relevant to whether the City's water and wastewater rates are just and reasonable, the central subject matter underlying this rate appeal. The Petitioner's Request is particularly germane to whether the City's rates reflect the true cost of service or whether River Place Ratepayers are, in reality, paying for other non-Austin Water Utility city department expenses which have nothing to do with the provision of water and wastewater services. Expense documentation from other city departments paid or subsumed by the Austin Water Utility goes directly to the development of the City's Cost of Service, investigation of which is mandated by Commission rules.⁵ Thus, the City's objection that Petitioners' Request is not reasonably calculated to lead to the discovery of admissible evidence is patently false and contrary to TRCP 192.3. Discovery is intended to have a wide scope, wider than what may be admissible at hearing.⁶ Moreover, because the requested documents exist in a finite universe, a specified period of time with beginning and end, it cannot be overbroad and burdensome. Based on the City's disclosures identifying the numerous staff with knowledge of relevant facts, the City clearly has ample resources to locate and produce information responsive to Petitioners' Request. This objection should be overruled.

⁵ P.U.C. PROC. R. 24.135 (requiring the Commission to calculate a cost of service).

⁶ TEX. R. CIV. P. 192.3.

D. Petitioners' Request for Information No. 15

Petitioners' Request for Information No. 15: For calendar years 2014 and 2015, please provide all documents related to and showing any expenses from other City departments that were reimbursed by the Austin Water Utility through interfund transfers.

City's Response: Respondent objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects to the request as being made for the purpose of harassment.

Petitioners' Response: Petitioners incorporate their response to the City's objection to Request for Information No. 14, above. Here again, the point of Petitioners' Request is to identify whether the City's rates reflect the true cost of providing water and wastewater services or whether they are excessive because they include non-water and wastewater expenses from other City departments. This question goes to the heart of this case, it requests very specific information about the development of the City's cost of service which is mandated by law. Interfund transfers to the City's general fund or to other departments are typical of information provided in utility rate appeal cases. The City has ample staff to locate and produce responsive information. This objection should be overruled.

E. Petitioners' Request for Information No. 16

Petitioners' Request for Information No. 16: Please provide all documents related to and showing expenses from other City departments that were reimbursed by the Austin Water Utility through an allocation methodology during calendar years 2014 and 2015.

City's Response: Respondent objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible

evidence. Respondent further objects to the request as being made for the purpose of harassment.

Petitioners' Response: Petitioners incorporate their response to the City's objection to Request for Information No. 14, above. As stated above, documentation of a utility's allocation methodology is typically produced in utility rate appeal cases and is central to the query of whether the utility is charging just and reasonable rates. The allocation methodology is fundamental to how the city allocates its costs and therefore develops its cost of service and rates. Petitioner's Request for documents during a specified period of time is relevant and not overly broad or unduly burdensome. This material either exists or it does not. This objection should be overruled.

F. Petitioners' Request for Information No. 17

Petitioners' Request for Information No. 17: If any expenses from other City Departments are allocated to the Austin Water Utility instead of direct billed, please provide the Allocation Methodology Manual and all documents related to each allocation methodology for each allocated expense.

City's Response: Respondent objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects to the request as being made for the purpose of harassment.

Petitioners' Response: Petitioners incorporate their response to the City's objection to Request for Information No. 14, above. As stated above, the allocation methodology is a standard way utilities derive their cost of service and determine the revenue requirement which is the basis for utility rates. This information is directly pertinent to whether the City's rates are just and reasonable, is relevant, and not overly broad or unduly burdensome. This objection should be overruled.

G. Petitioners' Request for Information No. 18

Petitioners' Request for Information No. 18: If any expenses from other City Departments are allocated to the Austin Water Utility instead of direct billed, please provide all background information used to allocate those expenses.

City's Response: Respondent objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects to the request as being made for the purpose of harassment.

Petitioners' Response: Petitioners incorporate their response to the City's objection to Request for Information No. 14, above. Expenses which may be allocated to the Austin Water Utility (instead of direct bill) is the very type of information which is pertinent to the development of the cost of service (the investigation of which is mandated by law) and, in turn, the design of rates. This objection should be overruled.

III. CONCLUSION

For the reasons set out above, Petitioners respectfully request that the ALJs deem the above-identified Requests for Admissions, admitted, overrule the remaining objections made by the City to Petitioners' Requests for Information, direct the City to provide the corresponding answers and grant the Petitioners other and such relief to which Petitioners are entitled.

Respectfully submitted,

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ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

I hereby certify that I have or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, and/or Certified Mail Return Receipt Requested on all parties on the 10th day of April 2015.

By: Helen S. Gilbert
Helen S. Gilbert