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PETITION OF RATEPAYERS OF
THE FORMER RIVER PLACE
WATER AND WASTEWATER
SYSTEMS APPEALING
THE RETAIL WATER AND
WASTEWATER RATES OF THE
CITY OF AUSTIN

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

CITY OF AUSTIN'S REPLY TO COMMISSION STAFF'S RESPONSE TO THE CITY OF
AUSTIN'S MOTION FOR RECONSIDERATION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW, the City of Austin, (herein sometimes referred to as "City," "Austin", "Austin Water Utility" or "Respondent"), in the above styled and docketed water and wastewater rate appeal proceeding, and serves this, its Reply to Commission Staff's Response to the City of Austin's Motion for Reconsideration ("Commission Staff's Response").

I. INTRODUCTION

1. On May 4, 2015, the ALJs convened a second Prehearing Conference in which the ALJs announced their ruling on the PUC's jurisdiction to consider Petitioners' appeal of Austin's October 1, 2014 and November 1, 2014 increases in water and wastewater rates to the former ratepayers of the River Place Water and Wastewater Systems; and Petitioners' request for interim rates.
2. On May 6, 2015, the ALJs issued SOAH Order No. 6 Ruling on Jurisdiction, Notice and Request for Interim Rates.
3. On May 18, 2015 the City of Austin filed its *Appeal of SOAH Order No. 6 and Motion for Reconsideration* under P. U. C. Proc. R. 22.123(a).

4. On May 21, 2015 the Commission Staff's Response objecting to the City of Austin's Motion for Reconsideration.

II. ARGUMENT

In the Commission Staff's Response of May 21, 2015, Commission Staff objects to Austin's *Appeal of SOAH Order No. 6 and Motion for Reconsideration*, stating that the Motion for Reconsideration should have been filed within 5 working days of SOAH Order No. 6, pursuant to PUC Proc. R. 22.123(b) *Motion for reconsideration of interim order issued by the commission*.

A. PUC Proc. R. 22.123(a) applies to Austin's Appeal of SOAH Order No. 6 and Motion for Reconsideration.

Austin's *Appeal of SOAH Order No. 6 and Motion for Reconsideration*, however, is pursuant to PUC Proc. R. 22.123(a), *Appeal of an Interim Order*. The requirements for appealing an interim order of a *presiding officer*¹ are set out below, with emphasis supplied:

22.123(a) Appeal of an interim order.

(1) Availability of appeal. Appeals are available for any order of the presiding officer that immediately prejudices a substantial or material right of a party, or materially affects the course of the hearing, other than evidentiary rulings. Interim orders shall not be subject to exceptions or application for rehearing prior to issuance of a proposal for decision.

(2) Procedure for appeal. If the presiding officer intends to reduce an oral ruling to a written order, the presiding officer shall so indicate on the record at the time of the oral ruling and shall promptly issue the written order. **Any appeal to the commission from an interim order shall be filed within ten days of the issuance of the written order or the appealable oral ruling when no written order is to be issued. The appeal shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.**

¹ A presiding officer is defined in P.U.C. Proc. R. 22.2 as follows:

(34) Presiding officer--The commission, any commissioner, or any hearings examiner or administrative law judge presiding over a proceeding or any portion thereof.

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(8) Reconsideration of appeal by presiding officer. The presiding officer *may treat an appeal as a motion for reconsideration* and may withdraw or modify the order under appeal prior to a commission decision on the appeal. The presiding officer shall notify the commission of its decision to treat the appeal as a motion for reconsideration.

Therefore, under P.U.C. Proc. R. 22.123(a), an appeal may be treated by the presiding officers, the Administrative Law Judges (“ALJs”), as a motion for reconsideration and may withdraw or modify the order under appeal prior to a commission decision on the appeal. In the Request for Relief section of its *Appeal of SOAH Order No. 6 and Motion for Reconsideration*, Austin asked the ALJs to consider its Appeal of SOAH Order No. 6 as a Motion for Reconsideration, under 22.123(a)(8). That decision rests with the ALJs. Austin’s *Appeal of SOAH Order No. 6 and Motion for Reconsideration* never cited P.U.C. Proc. R. 22.123(b).

B. P.U.C. Proc. R. 22.123(b) does not apply to Austin’s Appeal of Order No. 6 and Motion for Reconsideration.

Conversely, PUC Proc. R. 22.123(b) *Motion for reconsideration of interim order issued by the Commission* states:

(2) Procedure for motion for reconsideration. If the commission does not intend to reduce an oral ruling to a written order, the commission shall so indicate on the record at the time of the oral ruling. A motion for reconsideration of an interim order issued by the commission shall be filed within five workings (sic) days of the issuance of the written interim order or the oral interim ruling. The motion for reconsideration shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.

However, PUC Proc. R. 22.123(b) does not apply to Austin’s appeal because SOAH Order No. 6 is an interim order issued by a presiding officer, not the Commission. Austin was authorized to file its *Appeal of Order No. 6 and Motion for Reconsideration* under PUC Proc. R. 22.123(a) because Austin was not appealing an interim order issued by the Commission. Therefore Austin’s *Appeal of SOAH Order No. 6 and Motion for Reconsideration* which was filed under P.U. C. Proc. R. 22.123(a) was not required to be

filed in accordance with the 5 working day requirement of P.U. C. Proc. R. 22.123(b) as Commission Staff's Response urges.

III. SUMMARY

Austin timely filed its Appeal of SOAH Order No. 6 and Motion for Reconsideration "within ten days of the issuance of the written order" as specified in the applicable PUC Procedural Rule 22.123(a). In its Appeal of SOAH Order No. 6 and Motion for Reconsideration, Austin properly requested that the ALJs reconsider their jurisdictional rulings in SOAH Order No. 6, pursuant to P.U.C. Proc. R. 1223(a)(8). Commission Staff's objection to the timeliness of Austin's Appeal of SOAH Order No. 6 and Motion for Reconsideration rests on the legal premise that Austin was required to file a Motion for Reconsideration of a SOAH order within five working days pursuant to P.U.C. Proc. R. 22.123(b) cited by Commission Staff. To the contrary, P.U.C. Proc. R. 22.123(a) allows the relief requested by Austin in its *Appeal of Order No. 6 and Motion for Reconsideration* to be considered by both the Commission and the Administrative Law Judges.

Austin has not, and is not, seeking reconsideration of an order of the *Commission* under P.U.C. Proc. R. §22.123(b). The Commission has not yet rendered an order with respect to SOAH Order No. 6, and a motion for reconsideration would, therefore, be premature.

IV. RELIEF REQUESTED

CONSIDERING THE FOREGOING, THE CITY OF AUSTIN RESPECTFULLY REQUESTS that the Administrative Law Judges deny Commission Staff's motion to deny Austin's "Motion for Reconsideration" for the reasons stated herein above, and grant Austin such other and further relief as it may show itself entitled.

Respectfully submitted,

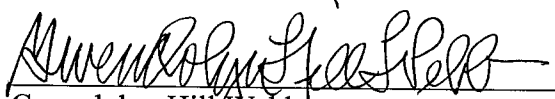
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CERTIFICATE OF SERVICE

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 22nd day of May, 2015.

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