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SOAH DOCKET NO. 473-15-2123.WS
PUC DOCKET NO. 44010

2015 JUL -6 PM 1:03
BEFORE THE
PUBLIC UTILITY COMMISSION
FILING CLERK

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

**OBJECTIONS AND RESPONSES OF PETITIONERS TO THE CITY OF
AUSTIN'S FIRST REQUEST FOR ADMISSIONS AND SECOND REQUEST
FOR INFORMATION**

TO: The City of Austin, by and through its attorney, Gwendolyn Webb, Webb & Webb, 712 Southwest Tower, 211 East Seventh Street, Austin, Texas 78767.

COME NOW, the Petitioners of the River Place Water and Wastewater Systems ("Petitioners") and serve this, their Objections to the City of Austin's First Request for Admissions and Second Request for Information pursuant to Chapter 2001 of the Texas Government Code, the Texas Rules of Civil Procedure, and applicable rules and regulations of the Public Utility Commission of Texas ("Commission") and the State Office of Administrative Hearings ("SOAH").

I. PRELIMINARY STATEMENT AND OBJECTIONS

Petitioners object to the City's definitions and instructions to the extent the City seeks to impose obligations with respect to discovery beyond those required by the applicable statutes and rules of court, and to the extent they attempt to ascribe to certain words or phrases meanings other than their customary and ordinary meanings. Petitioners make all of the following Responses subject to this objection and consistent with the obligations and duties imposed by the Texas Rules of Civil Procedure.

Petitioners object to the City's Requests to the extent they seek information not in the possession, custody, or control of Petitioners and/or information that is equally within the possession, custody, or control or that are publicly available or otherwise readily accessible to the City. Petitioners further object to the production of any information or document that contains proprietary information or personnel information regarding individuals who have not asserted claims in this suit because the disclosure of such information or document would invade the privacy and property rights under State and Federal law of Petitioners, Petitioners' employees, or former employees of Petitioners.

Petitioners object to the City's Requests to the extent that they seek confidential and proprietary information, trade secret or commercial and financial information.

Petitioners intend to assert all applicable privileges and exemptions from discovery and to otherwise fully protect privileged or exempt information or documents. Any disclosure of privileged or exempt information is inadvertent, involuntary and unintentional, and Petitioners do not intend it to be a waiver of any privileges or exemptions.

These Responses to the Requests represent Petitioners' reasonable efforts to provide the information requested based upon documents in its possession, custody or control, and based upon its current knowledge. However, there is a possibility that upon further investigation, Petitioners may supplement or amend certain details set forth in the Responses. Therefore, Petitioners reserves its right as provided under the Texas Rules of Civil Procedure to produce subsequently discovered responsive documents and information.

Petitioners' Responses are made without waiving or intending to waive, but rather, preserving and intending to preserve all questions as to the competence, relevance, authenticity, materiality, and admissibility of the evidence for any purpose of the information in this or any other court action or judicial or administrative proceedings or investigation, the right to object on any ground to the use of the information or documents in this or any other court action or judicial or administrative proceeding or

investigation, and the right to object at any time in any further response to this or any other discovery request.

An indication that Petitioners agree to produce relevant documents, which they believe to be properly called for by a particular request, does not necessarily imply the existence of the documents requested.

Each and every response to any of the following inquiries set forth in the City's Requests is intended to include and hereby incorporates by reference the general objections stated above. Petitioners do not intend any response to be a waiver of these objections. Petitioners do not intend and do not vitiate these general objections by making additional specific objections to a particular request.

Petitioners make these responses solely for the purpose of this action. Petitioners make each response subject to all objections as to competence, materiality, relevance, or other objection as to admissibility that may apply in the event that any such response, or the information contained therein, is sought to be used in another proceeding. Petitioners expressly reserve all such objections.

Petitioners object to each discovery request to the extent that it seeks information protected from disclosure by the attorney-client, work product, party communications, and consulting expert privileges and/or exemptions from discovery, including all subparts of Texas Rules of Evidence Rule 503(b). Petitioners object to each discovery request to the extent that it exceeds the requirements of the Texas Rules of Civil Procedure. Pursuant to Rule 192.3 of the Texas Rules of Civil Procedure, Petitioners is obligated only to produce documents in its "possession, custody, or control." As such, Petitioners objects to each and every Request for Information that seeks the production of material that imposes obligations beyond those contemplated by Rule 192.

Pursuant to Rule 193.3(a) of the Texas Rules of Civil Procedure, Petitioners may withhold privileged information and materials responsive to the City's discovery requests. Petitioners may assert the following privileges for the information and materials requested, if any, withheld from production: work product, attorney/client

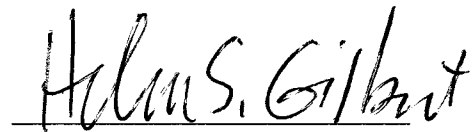
communication, and information made privileged by law, including trade secret, commercial and financial information. Petitioners do not intend to waive any claim of privilege by the inadvertent production of privileged materials.

Petitioners have undertaken a good faith search for the information and documents requested by the City. Petitioners' make these responses without prejudice to Petitioners' right to change or supplement their responses, to produce additional documents, and to present additional evidence at the hearing. If necessary, Petitioners will supplement its responses in accordance with Rule 193.5.

Petitioners reserve the right to redact certain information that is not relevant, non-responsive, or privileged from documents that are otherwise responsive and non-privileged.

Respectfully submitted,
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By:



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ATTORNEYS FOR PETITIONERS

CERTIFICATE OF CONFERENCE

Counsel for Petitioners attempted to negotiate diligently and in good faith with counsel for the City, but the parties were not able to reach agreement regarding some of the RFIs, necessitating the filing of these Objections.

By: Helen S. Gilbert

CERTIFICATE OF SERVICE

I hereby certify that I have served 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 6th day of July 2015.

By: Helen S. Gilbert

II. ANSWERS TO REQUESTS FOR ADMISSIONS

Request for Admission No. 1: Admit or deny that all Petitioners are residents of River Place Municipal Utility District ("MUD").

Answer: After a reasonable inquiry, Petitioners are unable to admit or deny the request due to lack of information or knowledge or that any information known or easily obtained by Petitioners was insufficient to enable them to admit or deny Petitioner's Request for Admission pursuant to TRCP 198.2(b).

Request for Admission No. 2: Admit or deny that all Petitioners are members of the River Place Residential Community Association, Inc.

Answer: After a reasonable inquiry, Petitioners are unable to admit or deny the request due to lack of information or knowledge or that any information known or easily obtained by Petitioners was insufficient to enable them to admit or deny Petitioner's Request for Admission pursuant to TRCP 198.2(b).

Request for Admission No. 3: Admit or deny that the River Place MUD was acting on behalf of the rate payers [sic] of the River Place subdivision, in which the Petitioners reside, when it executed the Strategic Partnership with Austin in 2009.

Answer: Deny.

Request for Admission No. 4: Admit or deny that the retail residential water and wastewater rates charged to River Place Petitioners are the same rates charged to all City of Austin retail residential Petitioners.

Answer: After a reasonable inquiry, Petitioners are unable to admit or deny the request due to lack of information or knowledge or that any information known or easily obtained by Petitioners was insufficient to enable them to admit or deny Petitioner's Request for Admission pursuant to TRCP 198.2(b).

Request for Admission No. 5: Admit or deny that the City's retail residential water and wastewater rates are the same rates charged to all retail residential Petitioners residing outside the City of Austin.

Answer: After a reasonable inquiry, Petitioners are unable to admit or deny the request due to lack of information or knowledge or that any information known or easily obtained by Petitioners was insufficient to enable them to admit or deny Petitioner's Request for Admission pursuant to TRCP 198.2(b).

Request for Admission No. 6: Admit or deny that Petitioners are beneficiaries of the Strategic Partnership Agreement between the City of the Austin and the River Place Municipal Utility District.

Answer: Deny.

Request for Admission No. 7: Admit or deny that Petitioners are beneficiaries of the Agreement for Water and Wastewater Service and Operations Management of Facilities between the City of Austin and the River Place MUD.

Answer: Deny.

III. ANSWERS TO REQUEST FOR INFORMATION

Request for Information No. 1: Please identify all persons who participated in answering these Requests for Information.

Answer: Randy Wilburn and Helen Gilbert.

Request for Information No. 2: Please provide the assumed name of the Petitioner group or organization, if there is a group or organization and an assumed name.

Objection: Petitioners object to this request for information as irrelevant to the subject matter of the proceeding (i.e., whether the City of Austin based its rates charged to the ratepayers of the River Place water and wastewater systems on the cost of providing service via the River Place water and wastewater systems) (P.U.C. Proc. R. 22.144(d)) and not reasonably calculated to lead to the discovery of admissible evidence (*K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996); Tex. R. Civ. P. 192.3) since Petitioners are ratepayers receiving bills, they have standing to appeal the subject rates pursuant to sections 13.043 of the Texas Water Code. This request also seeks evidence that is subject to confidential settlement negotiations pursuant to Tex R. Evid. 408. Furthermore, the undefined term(s) "group or organization" is vague, ambiguous, and subject to multiple meanings. Subject to the foregoing objection, however, Petitioners answer as follows:

Answer: There is not an assumed name other than Petitioners or the Ratepayers of the River Place Water and Wastewater Systems.

Request for Information No. 3: Please provide all documents relating to the River Place Petitioners' group or organization.

Answer: After a diligent search, Petitioners were unable to identify any documents responsive to this request.

Request for Information No. 4: Please state the names of all Petitioners or members of the River Place Petitioners' group who organized these appeals of Austin's retail residential water and wastewater rates, and explain all reasons for the appeals.

Objection: Petitioners object to the form of this compound question. Subject to the foregoing objection however, Petitioners answer as follows:

Answer: *See Original Petition Appealing Retail Water and Wastewater Rates of the City of Austin and Motion for Interim Rates* filed December 20, 2014, including 82 pages of attached Petitioner signatures. *See also*, Petitioners' Response to Austin's Request for Disclosures.

Request for Information No. 5: Please state the relief requested by the Petitioners in this contested case hearing before the Public Utility Commission ("PUC") and the State Office of Administrative Hearings ("SOAH").

Answer: *See* Petitioners' Response to Austin's Request for Disclosures.

Request for Information No. 6: Please provide the names of Petitioners' representatives with authority to enter into and bind the Petitioners and/or Petitioners' group or organization to any agreement with the City of Austin regarding water and wastewater rates.

Objection: Petitioners object to this request for information as irrelevant to the subject matter of the proceeding (i.e., whether the City of Austin based its rates charged to the ratepayers of the River Place water and wastewater systems on the cost of providing service via the River Place water and wastewater systems) (P.U.C. Proc. R. 22.144(d)) and not reasonably calculated to lead to the discovery of admissible evidence (*K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996); Tex. R. Civ. P. 192.3) since Petitioners are ratepayers receiving bills, they have standing to appeal the subject rates pursuant to sections 13.043 of the Texas Water Code. This request also seeks evidence that is subject to confidential settlement negotiations pursuant to Tex R. Evid. 408. Furthermore, the undefined term(s) "group or organization" is vague, ambiguous, and subject to multiple

meanings.

Request for Information No. 7: Please state whether or not [sic] Petitioners Lee Wretland, Scott Crosby and Wick Tobias are authorized to enter into an agreement with the City of Austin resolving this rate dispute, and, also, binding “the Petitioners of the River Place Water and Wastewater Systems” to the terms and conditions of any such agreement.

Objection: Petitioners object to this request for information as irrelevant to the subject matter of the proceeding (i.e., whether the City of Austin based its rates charged to the ratepayers of the River Place water and wastewater systems on the cost of providing service via the River Place water and wastewater systems) (P.U.C. Proc. R. 22.144(d)) and not reasonably calculated to lead to the discovery of admissible evidence (*K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996); Tex. R. Civ. P. 192.3) since Petitioners are ratepayers receiving bills, they have standing to appeal the subject rates pursuant to sections 13.043 of the Texas Water Code. This request also seeks evidence that is subject to confidential settlement negotiations pursuant to Tex R. Evid. 408.

Request for Information No. 8: Please provide all documents, files, emails, sign-up sheets, and any other documents relating to the River Place Petitioners’ organization and prosecution of this appeal of Austin’s retail residential water and wastewater rates, and describe the objectives of these appeals, including relief outside of the pending contested case hearing.

Objection: Petitioners object to this request for information as irrelevant to the subject matter of the proceeding (i.e., whether the City of Austin based its rates charged to the ratepayers of the River Place water and wastewater systems on the cost of providing service via the River Place water and wastewater systems) (P.U.C. Proc. R. 22.144(d)) and not reasonably calculated to lead to the discovery of admissible evidence (*K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996); Tex. R. Civ. P. 192.3) since Petitioners are ratepayers receiving bills, they have standing to appeal the subject rates pursuant to sections 13.043 of the Texas Water Code. This request also seeks evidence that is subject to confidential settlement negotiations pursuant to Tex R. Evid. 408. Petitioners also object to this request for information to the extent it seeks information protected from disclosure by the attorney-client, work product, party communications, and consulting expert privileges and/or exemptions from discovery, including all subparts of Texas Rules of Evidence Rule 503(b). Finally, Petitioners object to filing an index of privileged or exempt documents pursuant to Proc. R. 22.144(d)(3).

Subject to the foregoing objection, however, Petitioners answer as follows:

Answer: After a diligent search, Petitioners were unable to identify any documents responsive to this request.

Request for Information No. 9: Please disclose and describe all participation by both the officers and membership of the River Place Residential Community Association, Inc. and the officers and directors of the River Place MUD in organizing, promoting or assisting in the instant water and wastewater rate appeals.

Objection: Petitioners object to this request for information as irrelevant to the subject matter of the proceeding (i.e., whether the City of Austin based its rates charged to the ratepayers of the River Place water and wastewater systems on the cost of providing service via the River Place water and wastewater systems) (P.U.C. Proc. R. 22.144(d)) and not reasonably calculated to lead to the discovery of admissible evidence (*K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996); Tex. R. Civ. P. 192.3) since Petitioners are ratepayers receiving bills, they have standing to appeal the subject rates pursuant to sections 13.043 of the Texas Water Code. This request also seeks evidence that is subject to confidential settlement negotiations pursuant to Tex R. Evid. 408. Petitioners further object to the form of this compound question.

Request for Information No. 10: Do you assert that the current rates that are applicable to the Petitioners are different from the water and wastewater rates charged to other outside city residential customers? If the answer is yes, please explain your understanding of the difference in the water and wastewater rates.

Objection: Petitioners object to this request for information as irrelevant to the subject matter of the proceeding (i.e., whether the City of Austin based its rates charged to the ratepayers of the River Place water and wastewater systems on the cost of providing service via the River Place water and wastewater systems) (P.U.C. Proc. R. 22.144(d)) and not reasonably calculated to lead to the discovery of admissible evidence (*K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996); Tex. R. Civ. P. 192.3) since rates charged to other customers are not germane to rates charged to Petitioners. Petitioners further object to the form of this compound question. Subject to the foregoing objection, however, Petitioners answer as follows:

Answer: See Petitioners' Response to Austin's Request for Disclosures.

Request for Information No. 11: Please provide a copy of the attorney engagement agreement between Petitioners and their attorneys pertaining to this rate appeal.

Objection: Petitioners object to this request for information as irrelevant to the subject matter of the proceeding (i.e., whether the City of Austin based its rates charged to the ratepayers of the River Place water and wastewater systems on the

cost of providing service via the River Place water and wastewater systems) (P.U.C. Proc. R. 22.144(d)) and not reasonably calculated to lead to the discovery of admissible evidence (*K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996); Tex. R. Civ. P. 192.3) since Petitioners are ratepayers receiving bills, they have standing to appeal the subject rates pursuant to sections 13.043 of the Texas Water Code. Petitioners further object to the form of this compound question. Petitioners also object to this request for information to the extent it seeks information protected from disclosure by the attorney-client, work product, party communications, and consulting expert privileges and/or exemptions from discovery, including all subparts of Texas Rules of Evidence Rule 503(b). Finally, Petitioners object to filing an index of privileged or exempt documents pursuant to Proc. R. 22.144(d)(3).

Request for Information No. 12: Please provide all reasons why the River Place Petitioners should not pay the retail residential water and wastewater rates agreed to between the City of Austin and the River Place MUD.

Objection: Petitioners object to this request for information as irrelevant to the subject matter of the proceeding (i.e., whether the City of Austin based its rates charged to the ratepayers of the River Place water and wastewater systems on the cost of providing service via the River Place water and wastewater systems) (P.U.C. Proc. R. 22.144(d)) and not reasonably calculated to lead to the discovery of admissible evidence (*K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996); Tex. R. Civ. P. 192.3). Subject to the foregoing objection, however, Petitioners answer as follows:

Answer: *See* Petitioners' Response to Austin's Request for Disclosures.

Request for Information No. 13: Do you assert the right to be charged different retail residential water and wastewater rates from other Austin Water Utility residential water and wastewater Petitioners? If the answer is yes, on what bases do you assert such a right?

Objection: Petitioners object to this request for information as irrelevant to the subject matter of the proceeding (i.e., whether the City of Austin based its rates charged to the ratepayers of the River Place water and wastewater systems on the cost of providing service via the River Place water and wastewater systems) (P.U.C. Proc. R. 22.144(d)) and not reasonably calculated to lead to the discovery of admissible evidence (*K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996); Tex. R. Civ. P. 192.3). Subject to the foregoing objection, however, Petitioners answer as follows:

Answer: *See* Petitioners' Response to Austin's Request for Disclosures and Texas Water Code section 13.043(b)(3).

Request for Information No. 14: Do you assert the right to be charged different retail residential water and wastewater rates from other Austin Water Utility outside city residential water and wastewater Petitioners? If the answer is yes, on what bases do you assert such a right?

Objection: Petitioners object to this request for information as irrelevant to the subject matter of the proceeding (i.e., whether the City of Austin based its rates charged to the ratepayers of the River Place water and wastewater systems on the cost of providing service via the River Place water and wastewater systems) (P.U.C. Proc. R. 22.144(d)) and not reasonably calculated to lead to the discovery of admissible evidence (*K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996); Tex. R. Civ. P. 192.3). Subject to the foregoing objection, however, Petitioners answer as follows:

Answer: *See* Petitioners' Response to Austin's Request for Disclosures and Texas Water Code section 13.043(b)(3).

Request for Information No. 15: Do you seek a final order from the PUC that allows Austin to discriminate between the River Place Petitioners' rates and other retail residential water and wastewater Petitioners?

Objection: Petitioners object to this request for information as irrelevant to the subject matter of the proceeding (i.e., whether the City of Austin based its rates charged to the ratepayers of the River Place water and wastewater systems on the cost of providing service via the River Place water and wastewater systems) (P.U.C. Proc. R. 22.144(d)) and not reasonably calculated to lead to the discovery of admissible evidence (*K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996); Tex. R. Civ. P. 192.3). Subject to the foregoing objection, however, Petitioners answer as follows:

Answer: *See* Petitioners' Response to Austin's Request for Disclosures and Texas Water Code section 13.043(b)(3).

Request for Information No. 16: Do you seek a final order from the PUC that allows Austin to discriminate between the River Place Petitioners' rates and other outside city retail residential water and wastewater Petitioners?

Objection: Petitioners object to this request for information as irrelevant to the subject matter of the proceeding (i.e., whether the City of Austin based its rates charged to the ratepayers of the River Place water and wastewater systems on the cost of providing service via the River Place water and wastewater systems) (P.U.C. Proc. R. 22.144(d)) and not reasonably calculated to lead to the discovery of admissible evidence (*K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex.

1996); Tex. R. Civ. P. 192.3). Subject to the foregoing objection, however, Petitioners answer as follows:

Answer: *See* Petitioners' Response to Austin's Request for Disclosures and Texas Water Code section 13.043(b)(3).

Request for Information No. 17: Please identify all Petitioners who are now or have ever been officers, employees, or consultants to the River Place Residential Community Association, Inc. or the River Place MUD, and indicate the dates that such identified persons served or serve in such capacities with the River Place MUD or the River Place Residential Community Association, Inc.

Objection: Petitioners object to this request for information as irrelevant to the subject matter of the proceeding (i.e., whether the City of Austin based its rates charged to the ratepayers of the River Place water and wastewater systems on the cost of providing service via the River Place water and wastewater systems) (P.U.C. Proc. R. 22.144(d)) and not reasonably calculated to lead to the discovery of admissible evidence (*K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996); Tex. R. Civ. P. 192.3) since Petitioners are ratepayers receiving bills, they have standing to appeal the subject rates pursuant to sections 13.043 of the Texas Water Code. This request also seeks evidence that is subject to confidential settlement negotiations pursuant to Tex R. Evid. 408. Petitioners further object to the form of this compound question, which is not properly limited in time, scope, or relation to the facts at issue in this proceeding.

Request for Information No. 18: Please provide copies of all water and wastewater bills paid by all the Petitioners for the months of March and April, 2015.

Objection: Petitioners object to this request for information to the extent it is unduly burdensome and seeks information that is equally within the possession, custody or control or otherwise readily accessible to the City.

Request for Information No. 19: Please provide copies of all documents, including email communications, between representatives of the River Place Residential Community Association, Inc. and the River Place MUD and any of the Petitioners regarding the instant rate appeals.

Objection: Petitioners object to this request for information as irrelevant to the subject matter of the proceeding (i.e., whether the City of Austin based its rates charged to the ratepayers of the River Place water and wastewater systems on the cost of providing service via the River Place water and wastewater systems) (P.U.C. Proc. R. 22.144(d)) and not reasonably calculated to lead to the discovery of admissible evidence (*K-Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431-32 (Tex. 1996); Tex. R. Civ. P. 192.3) since Petitioners are ratepayers receiving bills, they

have standing to appeal the subject rates pursuant to sections 13.043 of the Texas Water Code. Petitioners further object to this request as it seeks information that is equally within the possession, custody or control or that are publicly available otherwise readily accessible to the City. Subject to the foregoing objection, however, Petitioners answer as follows:

Answer: After a diligent search, Petitioners were unable to identify any documents responsive to this request.