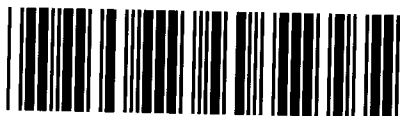




Control Number: 44010



Item Number: 78

Addendum StartPage: 0

PETITION OF THE RATEPAYERS § BEFORE THE STATE OFFICES
OF THE RIVER PLACE WATER §
AND WASTEWATER SYSTEMS FOR §
REVIEW OF A DECISION BY THE § OF
CITY OF AUSTIN TO CHANGE §
RETAIL RATES § ADMINISTRATIVE HEARINGS

**COMMISSION STAFF'S OBJECTIONS TO THE CITY OF AUSTIN'S SECOND
REQUEST FOR INFORMATION TO COMMISSION STAFF**

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 Second Request for Information to Commission Staff.

I. BACKGROUND

On July 8, 2015, Staff received the City of Austin's Second Request for Information (RFIs) to Commission Staff. Pursuant to Title 16, Tex. Admin. Code (16 TAC) § 22.144(d), the deadline for filing responses to the RFIs is July 28, 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. Pursuant to Tex. R. Civ. Proc. 192.3, objections and responses to requests for admission are due 30 days from the date of service; accordingly, Staff intends to file objections and responses to the City of Austin's First Request for Admission on August 7, 2015.

Pursuant to 16 TAC § 22.144(d), the deadline for filing objections to the RFIs is July 17, 2015.¹ Therefore, these objections are timely filed.

I. STAFF'S GENERAL OBJECTIONS TO THE CITY OF AUSTIN'S SECOND 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, burdensome,

¹ Objections to requests for information must be filed within ten calendar days of receipt of the requests. Ten days from July 8, 2015 falls on Saturday, July 18, 2015.

² Tex. R. Civ. Proc. 192.3, 192.5.

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

Many 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).

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 SECOND 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 second RFIs as follows:

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

REQUEST FOR INFORMATION NO. 2-1: Please identify all rules that PUC Staff will use in evaluating the revenue requirement in this contested case hearing.

STAFF's OBJECTIONS:

Staff objects to this request as it is available by other less expensive and more convenient sources.⁷

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.⁸ 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."⁹ 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.¹⁰

⁷ Tex. R. Civ. Proc. 191.3(c), 192.4.

⁸ Tex. R. Civ. Proc. 192.3, 192.5.

⁹ Tex. R. Civ. Proc. 192.5(a)(1)-(2).

¹⁰ *In re Exxon*, 208 S.W.3d 70, 75 (Tex. App.—Beaumont 2006).

REQUEST FOR INFORMATION NO. 2-2: Please identify all rules that PUC Staff will use in evaluating the rate design in this contested case hearing.

STAFF's OBJECTIONS:

Staff objects to this request as it is available by other less expensive and more convenient sources.¹¹

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). 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.¹⁴

¹¹ Tex. R. Civ. Proc. 191.3(c), 192.4.

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).

REQUEST FOR INFORMATION NO. 2-3: Please identify all rules that PUC Staff will use in evaluating whether rates are just and reasonable in this contested case hearing.

STAFF's OBJECTIONS:

Staff objects to this request as it is available by other less expensive and more convenient sources.¹⁵

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.¹⁶ 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."¹⁷ 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.¹⁸

¹⁵ Tex. R. Civ. Proc. 191.3(c), 192.4.

¹⁶ Tex. R. Civ. Proc. 192.3, 192.5.

¹⁷ Tex. R. Civ. Proc. 192.5(a)(1)-(2).

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

Subject to and without waiving the above objection, Staff will respond to this RFI by July 28, 2015.

REQUEST FOR INFORMATION NO. 2-4: Please identify the rules that PUC Staff considers applicable to a hearing on rates set pursuant to a written contract.

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 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.¹⁹ 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."²⁰ 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,

¹⁹ Tex. R. Civ. Proc. 192.3, 192.5.

²⁰ Tex. R. Civ. Proc. 192.5(a)(1)-(2).

conclusions, or legal theories which are protected under Tex. R. Civ. Proc. 192.5(a)(1) and (b)(1) are clearly prohibited.²¹

Subject to and without waiving the above objection, Staff will respond to this RFI by July 28, 2015.

²¹ *In re Exxon*, 208 S.W.3d 70, 75 (Tex. App.—Beaumont 2006).

REQUEST FOR INFORMATION NO. 2-5: Please identify the PUC rules which authorize the PUC to require Austin ratepayers to prepare for and pay for a contested case hearing when the agency has been advised before such costs are incurred that a valid petition has not been filed.

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 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.²² 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."²³ 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,

²² Tex. R. Civ. Proc. 192.3, 192.5.

²³ Tex. R. Civ. Proc. 192.5(a)(1)-(2).

conclusions, or legal theories which are protected under Tex. R. Civ. Proc. 192.5(a)(1) and (b)(1) are clearly prohibited.²⁴

Subject to and without waiving the above objection, Staff will respond to this RFI by July 28, 2015.

²⁴ *In re Exxon*, 208 S.W.3d 70, 75 (Tex. App.—Beaumont 2006).

REQUEST FOR INFORMATION NO. 2-6: Please identify the PUC rules which authorize the PUC to require Austin ratepayers to prepare for and pay for a contested case hearing when the parties agree that rates are set pursuant to contract and no determination of the public interest has been made.

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 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.²⁵ 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."²⁶ 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,

²⁵ Tex. R. Civ. Proc. 192.3, 192.5.

²⁶ Tex. R. Civ. Proc. 192.5(a)(1)-(2).

conclusions, or legal theories which are protected under Tex. R. Civ. Proc. 192.5(a)(1) and (b)(1) are clearly prohibited.²⁷

Subject to and without waiving the above objection, Staff will respond to this RFI by July 28, 2015.

²⁷ *In re Exxon*, 208 S.W.3d 70, 75 (Tex. App.—Beaumont 2006).

REQUEST FOR INFORMATION NO. 2-7: 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 of Austin residential customers? If the answer is yes, please explain your understanding of the difference in the water and wastewater rates.

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 objects to this request as it is available by other less expensive and more convenient sources.²⁸

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.²⁹ 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."³⁰ 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

²⁸ Tex. R. Civ. Proc. 191.3(c), 192.4.

²⁹ Tex. R. Civ. Proc. 192.3, 192.5.

³⁰ Tex. R. Civ. Proc. 192.5(a)(1)-(2).

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.³¹

Subject to and without waiving the above objection, Staff will respond to this RFI by July 28, 2015.

³¹ *In re Exxon*, 208 S.W.3d 70, 75 (Tex. App.—Beaumont 2006).

REQUEST FOR INFORMATION NO. 2-8: Does PUC Staff assert that Petitioners have a right to be charged different retail residential water and wastewater rates from other Austin Water Utility residential water and wastewater ratepayers? If the answer is yes, on what bases do you assert that such a right exists?

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 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.³² 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."³³ 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,

³² Tex. R. Civ. Proc. 192.3, 192.5.

³³ Tex. R. Civ. Proc. 192.5(a)(1)-(2).

conclusions, or legal theories which are protected under Tex. R. Civ. Proc. 192.5(a)(1) and (b)(1) are clearly prohibited.³⁴

Subject to and without waiving the above objection, Staff will respond to this RFI by July 28, 2015.

³⁴ *In re Exxon*, 208 S.W.3d 70, 75 (Tex. App.—Beaumont 2006).

REQUEST FOR INFORMATION NO. 2-9: Does PUC Staff assert that Petitioners have a right to be charged different retail residential water and wastewater rates from other Austin Water Utility outside city residential water and wastewater ratepayers? If the answer is yes, on what bases do you assert that such a right exists?

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 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.³⁵ 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."³⁶ 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,

³⁵ Tex. R. Civ. Proc. 192.3, 192.5.

³⁶ Tex. R. Civ. Proc. 192.5(a)(1)-(2).

conclusions, or legal theories which are protected under Tex. R. Civ. Proc. 192.5(a)(1) and (b)(1) are clearly prohibited.³⁷

Subject to and without waiving the above objection, Staff will respond to this RFI by July 28, 2015.

³⁷ *In re Exxon*, 208 S.W.3d 70, 75 (Tex. App.—Beaumont 2006).

REQUEST FOR INFORMATION NO. 2-10: Does PUC Staff seek a final order from the PUC that allows Austin to discriminate between the River Place Petitioners' rates and other outside City of Austin retail residential water and wastewater ratepayers?

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 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.³⁸ 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."³⁹ 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,

³⁸ TEX. R. CIV. PROC. 192.3, 192.5.

³⁹ TEX. R. CIV. PROC. 192.5(a)(1)-(2).

conclusions, or legal theories which are protected under Tex. R. Civ. Proc. 192.5(a)(1) and (b)(1) are clearly prohibited.⁴⁰

Subject to and without waiving the above objection, Staff will respond to this RFI by July 28, 2015.

⁴⁰ *In re Exxon*, 208 S.W.3d 70, 75 (Tex. App.—Beaumont 2006).

REQUEST FOR INFORMATION NO. 2-11: Does PUC Staff believe that the PUC should issue a final order which allows Austin to discriminate between the River Place Petitioners' rates and other retail residential water and wastewater ratepayers? If the answer is yes, then please state the basis for the PUC Staff position.

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 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.⁴¹ 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."⁴² 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,

⁴¹ Tex. R. Civ. Proc. 192.3, 192.5.

⁴² Tex. R. Civ. Proc. 192.5(a)(1)-(2).

conclusions, or legal theories which are protected under Tex. R. Civ. Proc. 192.5(a)(1) and (b)(1) are clearly prohibited.⁴³

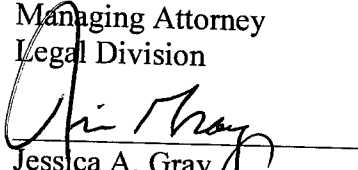
Subject to and without waiving the above objection, Staff will respond to this RFI by July 28, 2015.

DATE: July 17, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
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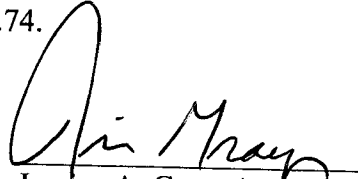
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7268 (facsimile)

⁴³ *In re Exxon*, 208 S.W.3d 70, 75 (Tex. App.—Beaumont 2006).

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

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 17th day of July, 2015 in accordance with 16 TAC § 22.74.



Jessica A. Gray, Attorney