



Control Number: 44010



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

2015 JUL 24 PM 3:00

PETITION OF RATEPAYERS OF THE FORMER RIVER PLACE WATER AND WASTEWATER SYSTEMS APPEALING THE RETAIL WATER AND WASTEWATER RATES OF THE CITY OF AUSTIN	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**CITY OF AUSTIN'S RESPONSES TO OBJECTIONS TO ITS DISCOVERY
REQUESTED FROM COMMISSION STAFF**

TO THE 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 pursuant to 16 TAC Ch. 22, Subch. H. Discovery Procedures and files this, its City of Austin Responses to Objections to its Discovery Requested from PUC Staff regarding its First Request for Admissions and Second Request for Information.

I. INTRODUCTION AND BACKGROUND FACTS

In this Motion to Compel, Austin seeks the assistance of the ALJs in requiring Commission Staff's answers to questions from Austin concerning: (1) The jurisdictional and relevant facts which give rise to this rate appeal; (2) Further definition of nature and extent of the controversy in this contested case hearing, including the applicable facts and law; and (3) Further definition of the matters in dispute in this water and wastewater rate appeal brought by the Ratepayers of the Former River Place Water and Wastewater Systems.

Relevant facts are as follows:

1. On March 30, 2015 the City filed and served its First Request for Information to the Staff of the Public Utility Commission.
2. On April 17, 2015 the Commission Staff filed its Responses to the City of Austin's First Request for Information to the Staff of the Public Utility Commission of Texas.
3. On July 8, 2015 the City filed and served its First Request for Disclosures to the Staff of the Public Utility Commission of Texas and its First Request for Admissions and Second Request for Information to Commission Staff.
4. On July 17, 2015 Commission Staff filed its Objections to the City of Austin's Second Request for Information to Commission Staff.
5. In preparing to file its prefiled direct case testimony, Austin seeks to determine all applicable facts and law to govern the PUC consideration of this case.

In light of a pending settlement in this matter, Austin attempted to reach agreement with PUC Staff pursuant to Tex. R. Civ. Proc. Rule 11. In fact, PUC Staff Attorney, Jessica Gray contacted City of Austin counsel to come to agreement on the issue. However, the PUC Staff did not provide a timely response to Austin's proposed Rule 11 Agreement Letter, and the deadline for this pleading is today. The City of Austin files this pleading merely to preserve its rights under PUC Discovery Rules. Had the parties reached a timely agreement, this pleading would have been unnecessary.

II. AUSTIN'S RESPONSES TO OBJECTIONS TO ITS DISCOVERY REQUESTS FROM COMMISSION STAFF

Austin requested general information from PUC Staff regarding the rules and policies of the PUC applicable to this contested case hearing. PUC Staff has conducted extensive discovery regarding the water and wastewater rates of Petitioners in this contested case hearing, and has yet to disclose any information at all regarding the legal and factual bases of its position in this case.

Austin's prefiled direct case is due August 14, 2015, and Austin needs the agency information requested from PUC Staff so that it can prepare its case.

Austin requested the following information and the PUC Staff provided only objections.

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.

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.

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.

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.

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.

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.

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.

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?

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?

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?

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.

Austin also propounded Requests for Admissions and Requests for Disclosures regarding which PUC Staff also lodge numerous spurious objections and simply refused to provide responses to.

III. AUSTIN'S RESPONSES TO OBJECTIONS TO ITS DISCOVERY REQUESTS FROM COMMISSION STAFF

Only PUC Staff can identify the applicable rules that it will use in evaluating the following: rate design, revenue requirement, the justness and reasonableness of rates, the applicable rules, the applicable rules for rate case expenses, the applicable rules for water and sewer rate appeals when rates are set pursuant to written contract per SOAH Order No. 6, the PUC Staff position on salient jurisdictional facts, the question of discriminatory and unduly preferential rates, the legal and factual position of PUC Staff regarding the Final Order in this contested case hearing. Tex. Gov't Code, §2001.058. Hearing Conducted by the State Office of Administrative Hearings, places an affirmative duty on the agency, represented herein by PUC Staff, to "provide the administrative law judge with a written statement of applicable rules and policies." Accordingly, the ALJs should compel PUC Staff to comply with Austin's Request for Information No. 2-2 in compliance with the "minimum standards of uniform practice and procedure for state agencies," set out in the Administrative Procedure Act, Tex. Gov't Code, §2001.001(c). It is disingenuous for PUC Staff to seek to avoid providing the statutorily mandated information and identifying the applicable rules by noting that all PUC rules are available through other means, when the information being sought is the specific rules which the PUC will use in evaluating the issues in *this specific* contested case hearing.

Austin needs notice of the applicable rules, policies and standards which apply to the evaluation of Austin's direct case in order to prepare its direct case. If, in fact, there are no such rules to provide in response to this request, then PUC Staff should be compelled to so state.

IV. REQUESTED RELIEF

Austin hereby respectfully requests that the Administrative Law Judges take action to avoid unnecessary delay in the disposition of the proceeding in accordance with 1 Tex. Admin. Code §155.153(a) as follows:

1. Overrule Petitioners' objections, and require Commission Staff to respond fully to Austin's requests, or be sanctioned for failure to do so; and
2. GRANT Austin such other and further relief to which it is justly and legally entitled.

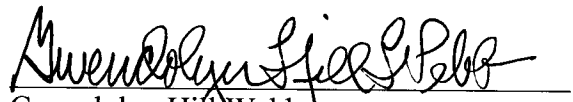
Respectfully submitted,

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ATTORNEYS FOR CITY OF AUSTIN

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

24th day of July, 2015.

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