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PUBLIC UTILITY COMMISSION  
FILING CLERK

PALOMA LAKE MUNICIPAL UTILITY §  
DISTRICT NO. 1, PALOMA LAKE §  
MUNICIPAL UTILITY DISTRICT NO. 2, §  
VISTA OAKS MUNICIPAL UTILITY §  
DISTRICT, WILLIAMSON COUNTY §  
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MUNICIPAL UTILITY DISTRICT NO. §  
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ACTIONS OF THE CITY OF ROUND §  
ROCK IN TRAVIS AND WILLIAMSON §  
COUNTIES §

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**THE CITY OF ROUND ROCK'S  
MOTION FOR RECONSIDERATION OF ORDER NO. 6**

The City of Round Rock (“City” or “Round Rock”), hereby files its Motion for Reconsideration of the Administrative Law Judges’ (“ALJs”) Order No. 6 (Feb. 22, 2019) (“Order 6”) in the above noted proceeding.

**I. Introduction**

On January 22, 2019, the City of Round Rock served its First Set of Requests for Information (RFIs) on Paloma Lake Municipal Utility District No. 1, Paloma Lake Municipal Utility District No. 2, Vista Oaks Municipal Utility District, Williamson County Municipal Utility District No. 10, and Williamson County Municipal Utility District No. 11 (collectively, “Petitioning MUDs”).

On February 1, 2019, Petitioning MUDs filed objections to all of the requests for information (“RFIs”) in Round Rock’s First Set of RFIs. On February 13, 2019, the Petitioning MUDs filed a response to Round Rock’s motion to compel. On February 22, 2019, the Administrative Law Judges (“ALJs”) entered Order No. 6, in which the ALJs granted in part and

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denied in part, the City's motion to compel responses to its First Set of RFIs. For the sake of convenience, the City sets out its RFI Nos. 1-1 and 1-4, below:

**ROUND ROCK RFI NOS. 1-1 & 1-4:**

- 1-1. For the period from January 1, 2015 through December 31, 2018, please provide the following:
- a. Copies of minutes of each Petitioning MUD's board meetings where the Petitioning MUD's agenda for such meetings, whether in open session or in executive session, included an item related to:
    - (i) The City of Round Rock's water and/or wastewater rates;
    - (ii) The Petitioning MUD's water and/or wastewater rates.
  - b. Copies of minutes of each Petitioning MUD's board meetings where the board discussed or was presented, whether in open session or in executive session, with information related to:
    - (i) The City of Round Rock's water and/or wastewater rates;
    - (ii) The Petitioning MUD's water and/or wastewater rates.
  - c. Copies of minutes of each Petitioning MUD's board meetings where the Petitioning MUD's agenda for such meetings, whether in open session or in executive session, included an item related to the Petitioning MUD's water and/or wastewater rates.
  - d. Copies of minutes of each Petitioning MUD's board meetings where the board discussed or was presented, whether in open session or in executive session, with information related to the Petitioning MUD's water and/or wastewater rates.
- 1-4. For the period from January 1, 2015 through December 31, 2018, please provide the following:
- a. Copies of all correspondence from or to one of the other Petitioning MUDs related directly or indirectly to the rates charged by the City;
  - b. Copies of all notes or other documentation pertaining to any meetings or discussions between any of the Petitioning MUDs and the City prior to the City's adoption of an ordinance approving a change in rates for water or wastewater service.
  - c. Copies of all resolutions or other approval documents in which the Petitioning MUD expressed its disagreement with the rates charged by the City;

- d. Copies of all resolutions or other approval documents in which the Petitioning MUD expressed its agreement with the rates charged by the City;
- e. Copies of all resolutions or other approval documents in which the Petitioning MUD approved any agreement between it and the City related to water and/or wastewater service from the City.

## **II. RFI Nos. 1-1 And 1-4 Seek Data Central to Round Rock's Quasi-Estoppel Legal Theory**

The City requests that the ALJs reconsider their ruling that the Petitioning MUDs need not provide responsive data to Round Rock's RFI Nos. 1-1 and 1-4 for the period of January 1, 2015 to September 30, 2017.<sup>1</sup> Central to Round Rock's position in this proceeding, and to its response to Issue No. 1(a)-(c) in the Commission's Preliminary Order for Phase I, is that the Petitioning MUDs are barred by the doctrine of quasi-estoppel from appealing wholesale water and wastewater rates that went into effect prior to October 1, 2018. To establish the facts relevant to the City's legal theory, the City must be able to show the parties' relationship under their respective contracts prior to the rates complained of by the Petitioning MUDs.

Issue No. 1 in the Preliminary Order asks:

1. Under TWC § 13.044 and 16 TAC § 24.45, must an appeal be filed by a date certain relative to the effective date of the rates being appealed? If so,
  - a. What is the authority that imposes the time limit for petitioners to bring a rate appeal?
  - b. What is the date certain by which an appeal must be filed relative to the City's water and wastewater rates effective October 1 of 2017, 2018, and 2019?
  - c. What is the time period of the City's water or wastewater rates that are subject to the petitioners' appeal under TWC § 13.044 and 16 TAC § 24.45?<sup>2</sup>

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<sup>1</sup> Paloma Lake Municipal Utility District No. 1, Paloma Lake Municipal Utility District No. 2, Vista Oaks Municipal Utility District, Williamson County Municipal Utility District No. 10, and Williamson County Municipal Utility District No. 11 Appealing the Ratemaking Actions of the City of Round Rock in Travis and Williamson Counties, Docket No. 48836, SOAH Order No. 6 (Feb. 22, 2019). [http://interchange.puc.texas.gov/Documents/48836\\_58\\_1009153.PDF](http://interchange.puc.texas.gov/Documents/48836_58_1009153.PDF).

<sup>2</sup> Paloma Lake Municipal Utility District No. 1, Paloma Lake Municipal Utility District No. 2, Vista Oaks Municipal Utility District, Williamson County Municipal Utility District No. 10, and Williamson County

Central to Round Rock's answer to the Issue No.1, is that the Petitioning MUDs are barred by the doctrine of quasi-estoppel from appealing wholesale water and wastewater rates that went into effect prior to October 1, 2018. Generally stated, the doctrine of quasi-estoppel forbids a party from accepting the benefits of a transaction and then subsequently taking an inconsistent position to avoid corresponding obligations or effects.<sup>3</sup>

The City's rates with dates effective of prior to October 1, 2018, have been in place for an extended period of time. The Petitioning MUDs did not file a petition for review until after the change in rates that went into effect on October 1, 2018. The Petitioning MUDs' boards knew what Round Rock's rates would be for the fiscal years beginning October 1 for years 2015, 2016, and 2017; and the Petitioning MUDs received the benefits of their respective contract with Round Rock for water and wastewater services and paid for those services for those years. But at no time prior to the date they filed their petition on October 31, 2018, did the Petitioning MUDs seek the Commission's review of Round Rock's rates for fiscal years prior to the fiscal year beginning October 1, 2018.

Consequently, absent discovery of data Round Rock seeks in RFI Nos. 1-1 and 1-4 for period from January 1, 2015 through September 30, 2017, the City will be hindered from fully exploring the point at which the Petitioning MUDs suddenly changed their position to now claim that the wholesale water and wastewater rates from prior years are unreasonable. The data the City seeks in RFI Nos. 1-1 and 1-4 for the period January 1, 2015 through September 30, 2017 is critical to the City's quasi-estoppel argument. The information Round Rock seeks informs

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Municipal Utility District No. 11 Appealing the Ratemaking Actions of the City of Round Rock in Travis and Williamson Counties, Docket No. 48836, Preliminary Order (Dec. 20, 2019). [http://interchange.puc.texas.gov/Documents/48836\\_14\\_1002961.PDF](http://interchange.puc.texas.gov/Documents/48836_14_1002961.PDF)

<sup>3</sup> *Vessels v. Anschutz Corp.*, 823 S.W.2d 762, 765-66 (Tex. App.—Texarkana 1992, writ denied); *see also Mexico's Industries, Inc. v. Banco Mexico Somex, S.N.C.*, 858 S.W.2d 577, 581 n. 7 (Tex. App.—El Paso 1993, writ denied); *Turcotte v. Trevino*, 499 S.W.2d 705, 712-13 (Tex.Civ.App.—Corpus Christi 1973, writ ref'd n.r.e.).

questions related to the Petitioning MUDs' positions "relative to the City's water and wastewater rates effective October 1 of 2017, 2018, and 2019;"<sup>4</sup> the data Round Rock seeks for the period January 1, 2015 through September 30, 2017, addresses issues such as whether the increase in rates was an agenda item or just brought up by happenstance; whether the board was presented information regarding changes in Round Rock's rate increase and the nature of such information; and crucially, the extent to which the board of each Petitioning MUD accepted the benefits of its contract with Round Rock for wholesale water and wastewater services.

The City will be hindered from fully presenting its quasi-estoppel argument if it cannot discover the nature and substance of the communications between the five Petitioning MUDs from January 1, 2015 through December 31, 2018. To best present a complete quasi-estoppel argument, the City aims to demonstrate that the MUDs are now taking a position that is contrary to the position to which it acquiesced and accepted the benefit of, from January 1, 2015 through at least September 30, 2017. The City requires the data sought in its RFI Nos. 1-1 and 1-4 to demonstrate the Petitioning MUDs' reversal of position and to inform the question of how the Petitioning MUDs handled their apparent disapproval of the rates charged by the City in years prior to the fiscal year that began October 1, 2019, and what documentation the Petitioning MUDs have of their disapproval or approval of the rates charged by the City.

Precluding the City from inquiring into documentation and communications among and between the Petitioning MUDs that occurred from January 1, 2015 through September 30, 2017, Round Rock will not be able to fully respond to the Commission's question, "what is the date certain by which an appeal must be filed *relative* to the City's water and wastewater rates

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<sup>4</sup> Paloma Lake Municipal Utility District No. 1, Paloma Lake Municipal Utility District No. 2, Vista Oaks Municipal Utility District, Williamson County Municipal Utility District No. 10, and Williamson County Municipal Utility District No. 11 Appealing the Ratemaking Actions of the City of Round Rock in Travis and Williamson Counties, Docket No. 48836, Preliminary Order (Dec. 20, 2019). [http://interchange.puc.texas.gov/Documents/48836\\_14\\_1002961.PDF](http://interchange.puc.texas.gov/Documents/48836_14_1002961.PDF)

effective October 1 of 2017, 2018, and 2019.” The City needs to be able look into communications and documents concerning the Petitioning MUDs’ treatment of the rate increase from as far back as when the Petitioning MUDs first learned of the rate increases.

### III. Conclusion and Prayer

The City of Round Rock respectfully requests that the Administrative Law Judges reconsider their Order 6 and compel the Petitioning MUDs to provide data in response to Round Rock’s RFI Nos. 1-1 and 1-4 for the period January 1, 2015 to September 30, and on through December 31, 2018.

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**ATTORNEYS FOR CITY OF ROUND  
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**CERTIFICATE OF SERVICE**

I certify that I have served a copy of *City of Round Rock's Motion for Reconsideration* upon all known parties of record by fax and/or first class mail on this the 27<sup>th</sup> day of February 2019.

A handwritten signature in cursive script, appearing to read "Mariann Wood", is written over a horizontal line.

Mariann Wood