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APPLICATION OF THE CITY OF § BEFORE THE STATE OFFICE
AUSTIN DBA AUSTIN WATER FOR § OF
AUTHORITY TO CHANGE WATER §
AND WASTEWATER RATES § ADMINISTRATIVE HEARINGS

**CITY OF AUSTIN D/B/A AUSTIN WATER'S
RESPONSE TO DISTRICTS' MOTION TO COMPEL
RESPONSES TO DISTRICTS' SEVENTH AND EIGHTH
REQUESTS FOR INFORMATION**

COMES NOW, the City of Austin (City) d/b/a Austin Water (AW or Austin Water) and files this Response to North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control & Improvement District No. 10, and Wells Branch Municipal Utility District's (collectively Districts) Motion to Compel City of Austin to Respond to Districts' Seventh and Eighth Requests for Information (Districts' Motion to Compel) filed on October 3, 2019. For the reasons contained in Austin Water's initial objections and in this response, the Administrative Law Judge (ALJ) should deny the Districts' Motion to Compel.

I. ARGUMENT

A. General note regarding Districts' representation of Austin Water's objections

In each of Districts' responses to AW's objections, Districts list what purports to be Austin Water's objections. However, Districts have excluded large portions of Austin Water's objections.¹ While Austin Water's responses to Districts' Motion to Compel may re-urge issues specified in Austin Water's objections, for the full text of each of Austin Water's objections, the ALJ should refer to Austin Water's actual objections.²

¹ See North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control & Improvement District No. 10, and Wells Branch Municipal Utility Districts' Motion to Compel City of Austin to Respond to Districts' 7th and 8th Request for Information at 2 and 5 (Sept. 30, 2019) (Districts' Motion to Compel).

² Austin Water's Objections to Districts' Seventh Request for Information (Sept. 30, 2019); Austin Water's Objections to Districts' Eighth Request for Information (Sept. 30, 2019).

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B. Definition Nos. 6 and 10

Austin Water objected to Definition No. 10 in Districts' Seventh Request for Information (RFI), and Definition Nos. 6 and 11 in Districts' Eighth RFI because the definitions would require a large amount of information *about* the information and material provided in response to a number of RFIs.³ While Districts' Motion to Compel refers to the definition of "identify" a document as Definition No. 10, it is numbered differently in Districts' Seventh and Eighth RFIs (Definition No. 10 in Districts' 7th RFI,⁴ and Definition No. 11 in Districts' Eighth RFI).⁵

Austin Water specifically objected to the definition of "describe" and the expression "describe in detail" in Definition No. 6 in Districts' Eighth RFI as requiring a list of details for each individual document that are ultimately unnecessary to adequately describe the responsive document.⁶ Those details include "the full name, address, and telephone number of the person involved, and the dates, time, places and other particulars."⁷ Definition Nos. 10 (in Districts' Seventh RFI) and 11 (in Districts' Eighth RFI) state that to "identify" a document is to state all files in which it and all copies are found, the identity of its author, its addresses, the persons who received a copy, the identity of the documents customer, the date of its preparation, and an overview of its subject matter.⁸ As Austin Water noted in its objection, the blanket directives established by this definition are unnecessary to adequately describe the responsive documents.⁹

³ Austin Water's Objections to Districts' Seventh Request for Information; Austin Water's Objections to Districts' Eighth Request for Information.

⁴ North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control & Improvement District No. 10, and Wells Branch Municipal Utility Districts' Seventh Request for Information to City of Austin dba Austin Water at 4 (Sept. 20, 2019) (Districts' Seventh RFI).

⁵ North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control & Improvement District No. 10, and Wells Branch Municipal Utility Districts' Eighth Request for Information to City of Austin dba Austin Water at 4 (Sept. 20, 2019) (Districts' Eighth RFI).

⁶ Austin Water's Objections to Districts' Eighth Request for Information at 2.

⁷ Districts' Eighth RFI at 3.

⁸ Districts' Seventh RFI at 4; Districts' Eighth RFI at 4.

⁹ Austin Water's Objections to Districts' Seventh Request for Information at 5-6; Austin Water's Objections to Districts' Eighth Request for Information at 3-4.

The Districts' Motion to Compel on this point is largely premised on irrelevancies and does not address why the meta-information that would be required by this definition is necessary for comprehension of the relevant material. The Districts note that: (1) AW has produced a wide range of material already as part of its Application;¹⁰ and (2) in the last Austin Water case before the Public Utility Commission of Texas (Commission), AW produced inactive Excel sheets, and that the burden of proof in this matter is on Austin Water.¹¹ None of this makes clear why the Districts' proposed, expansive definitions should be required. While Austin Water has the burden of proof, Austin Water is still protected against RFIs which are unduly burdensome, unnecessarily expensive, or for the purpose of harassment.

Finally, Districts claim that Austin Water's statement that it will respond using the commonly understood meaning of the term "Describe" or "describe in detail" fails to state specifically the legal or factual basis for its objection.¹² This statement is not Austin Water's factual basis for its objection, but instead, an attempt to reasonably respond to the questions instead of simply filing a blanket objection. Austin Water's basis for its objection was clearly laid out, describing how the definition is overburdensome, in violation of 16 Tex. Admin. Code (TAC) § 22.142(a)(1)(D) and Tex. R. Civ. Proc. 192.4.¹³ Districts' argument misses the mark, and confuses Austin Water's solution for the basis of its objection.

C. 16 Tex. Admin. Code § 22.144(h)

The Districts also complain about the procedure used to make voluminous discovery responses available to them. The Districts argue that Austin Water did not file an index of voluminous material as described in 16 TAC § 22.144(h)(4). They include images of the relevant CDs that carry the voluminous material that Austin Water has provided.¹⁴

¹⁰ Application of the City of Austin d/b/a Austin Water for Authority to Change Water and Wastewater Rates (Apr. 15, 2019) (Application).

¹¹ Districts' Motion to Compel at 2-3.

¹² Districts' Motion to Compel at 3.

¹³ Objections of Austin Water to Districts' Eighth Request for Information at 2.

¹⁴ Districts' Motion to Compel at 9-14.

In accordance with 16 TAC § 22.144(h)(3), Austin Water retains the discretion to make voluminous material available for inspection and copying in a voluminous room in Austin. Instead, Austin Water has provided all of the requested information in digital format, in an effort to make the information more accessible than the Commission rules require.¹⁵ Additionally, Austin Water sent a link to the voluminous material, in a format that is capable of being searched. All documents were also provided via the Commission's Interchange. Each document is designated with a date and title. The link to the files was sent to counsel for the Districts. As a result, the Districts were afforded the responsive material without having to inspect hard copies and in a format that allows for searching within the documents. By providing the actual documents themselves in a searchable format the need for an index is eliminated. In fact, it not clear why the Districts even want an index at this point other than for the sake of harassment.

Finally, Districts complain about the information which Austin Water has provided in response to Districts' Corrected Third RFI, claiming (1) that "the individual documents are impossible to distinguish from one another," (2) that Austin Water did not adequately describe the responsive documents, and (3) that 12 documents have a duplicate title.¹⁶ The facts prove otherwise.

First, at the same time Districts complain that the files are indistinguishable, Districts complain that Austin Water has distinguished each response, using the consistent format: "AW [Request Number], Attachment [Number]."¹⁷ Districts give no explanation for how this format hinders them, or how this fails to distinguish between attachments. Austin Water's consistent file format specifically identifies each responsive document and identifies the request to which the individual document responds. Second, Austin Water fully described in its response to Districts' RFI No. 3-38 that "Austin Water has also included all correspondences from the organizations

¹⁵ This same procedure was used by AEP Texas in their current rate proceeding, *Application of AEP Texas, Inc. for Authority to Change Rates*, Docket No. 49494. This case involved thousands of discovery questions.

¹⁶ Districts' Motion to Compel at 7-8.

¹⁷ Districts' Motion to Compel at 5 and 7.

relating to this matter as AW Districts 3-38, Attachments 2-28.”¹⁸ Immediately apparent within each attachment is information regarding who sent and received the correspondence, as well as the date, time, and subject matter of the correspondence. Finally, the 12 documents that share the same file name are distinguished by Austin Water’s attachment naming format, featuring specific attachment numbers for each document. The 12 documents share the same file name because they are different responses to the same email. Austin Water has satisfied its obligation to provide and describe the responsive information to Districts; Districts must simply review the documents.

Requiring Austin Water to provide an index would be unnecessarily burdensome on Austin Water, when the information is readily apparent by simply looking at the documents which Austin Water has already adequately described, organized, and provided.

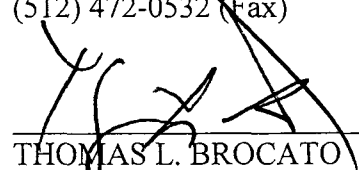
II. CONCLUSION

Austin Water respectfully requests that Districts’ Motion to Compel be denied, that its objections be sustained, and that it be granted any other relief to which it may be entitled.

Respectfully submitted,

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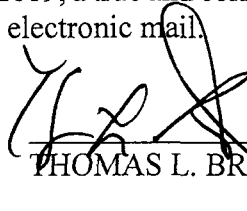
¹⁸ City of Austin d/b/a Austin Water’s Response to Districts’ Corrected Third Request for Information at 42 (Sept. 19, 2019).

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ATTORNEYS FOR AUSTIN WATER

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2019, a true and correct copy of the foregoing document has been served on all parties of record via electronic mail.



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