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STATE OFFICE
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ADMINISTRATIVE HEARINGS

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PUC DOCKET NO. 49189
SOAH DOCKET NO. 473-19-6297.WS

APPLICATION OF THE CITY OF	§	BEFORE THE STATE OFFICE
AUSTIN FOR AUTHORITY TO	§	
CHANGE THE WATER AND	§	
WASTEWATER RATES FOR NORTH	§	
AUSTIN MUNICIPAL UTILITY	§	
DISTRICT NO. 1, NORTHTOWN	§	
MUNICIPAL UTILITY DISTRICT,	§	OF
TRAVIS COUNTY WATER CONTROL	§	
AND IMPROVEMENT DISTRICT NO.	§	
10, AND WELLS BRANCH	§	
MUNICIPAL UTILITY DISTRICT IN	§	
WILLIAMSON AND TRAVIS	§	
COUNTIES	§	ADMINISTRATIVE HEARINGS

**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' 10TH REQUEST FOR INFORMATION**

COME NOW, 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 (“Districts”) and file this Motion to Compel, compelling the City of Austin to respond to the Districts’ Tenth Request for Information. The Districts filed and served their Tenth Request for Information to City of Austin dba Austin Water (“Requests”) on September 25, 2019. The City of Austin dba Austin Water (“AWU”) timely filed Objections to the Requests on October 7, 2019. Pursuant to 16 Tex. Admin. Code (“TAC”) § 22.144(e), “the party seeking discovery shall file a motion to compel no later than five working days after the objection is received”; therefore, the Districts’ Motion to Compel is timely filed. In support of this Motion, the Districts respectfully show the following:

I. BACKGROUND

As set out specifically below, the Districts filed their Requests on AWU generally seeking information related to AWU’s treatment of other classes of utility customers such as the State of Texas, Travis County, other wholesale, and retail customers as well as requests about debt, rate case expenses, and AWU’s Residential CAP program. A party may obtain discovery regarding

any matter that is not privileged and is relevant to the subject matter of the pending action, and may obtain discovery of information that is reasonably calculated to lead to the discovery of admissible evidence.¹ AWU objected to fourteen (14) of the Districts' Requests on relevancy grounds, repeating the same objection that the information sought was "not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a)."² The Districts timely file a Motion to Compel because the Districts are entitled to responses to their Requests.

II. RESPONSE TO AWU'S OBJECTIONS

A. General Objections

AWU generally objected to the Districts' Requests, complaining that the Requests are "not relevant to the subject matter of the proceeding."³ In no objection did AWU assert or explain that the information sought was not reasonably calculated to lead to the discovery of admissible evidence. Nor did AWU adequately explain why the Districts' Requests are irrelevant, it simply repeats its rote objection. In each case, the information sought is germane to this proceeding or reasonably calculated to lead to the discovery of admissible evidence as set forth more fully below.

B. Specific Objections

AWU made the following specific objections to the Districts' Requests:

1. **DISTRICTS 10-1:** To what customer class does AWU assign service provided to the State of Texas?

Objections: Austin Water objects to this request because it seeks information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a). Districts make several requests regarding Austin Water's services to the State of Texas. However, Austin Water's specific treatment of the State of Texas is not relevant to Austin Water's proposed wholesale water and wastewater rates for Districts. Specifically, Districts' RFI No. 10-1 requests information regarding the

¹ Tex. R. Civ. Proc. 192.3; 16 TAC § 22.141(a).

² See Objections of Austin Water to Districts' Tenth Request for Information, Docket No. 49189, pp. 3-8.

³ *Id.*

customer class which Austin Water assigns service to the State of Texas. The customer class assigned to the State of Texas is not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

The Districts are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party."⁴ How AWU classifies the State of Texas as a customer as well as additional customers other than the Districts is important, because AWU's classification impacts the Districts' rates due to AWU's actions to "functionalize, allocate, and equitably distribute. . . costs to the different types of customer classes served by the utility."⁵ In its testimony, AWU challenges who among the customer classes is paying their "fair share" and argues that other customers are subsidizing the rates of the Districts.⁶ However, the Districts suspect that AWU is not charging other classes the full cost of reasonable and necessary costs, which results in District rates that are unjust or unreasonable. Furthermore, failure to properly allocate and charge the State of Texas and other customers could result in prejudicial and discriminatory rates in violation of Chapter 13 of the Texas Water Code.

2. **DISTRICTS 10-2:** How much debt service coverage does AWU collect in its charges to the State of Texas?

Objections: Austin Water objects to this request because it seeks information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a). Districts make several requests regarding Austin Water's services to the State of Texas. However, Austin Water's specific treatment of the State of Texas is not relevant to Austin Water's proposed wholesale water and wastewater rates for Districts. Specifically, Districts' RFI No. 10-2 requests information regarding the amount of debt service coverage which Austin Water collects from its charges to

⁴ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

⁵Statement of Intent to Change Rates, p. 232, Attachment Direct Testimony of Richard D. Giardina, p. 11, lines 12 to 14 (Apr. 15, 2019).

⁶ Statement of Intent to Change Rates, pp. 26-27, 32, and 37, Attachment Direct Testimony of David Anders, p. 13, line 21 to p. 14, line 5; p. 24, lines 23 to 24 (April 15, 2019).

the State of Texas. The amount of debt service coverage which Austin Water collects from the State of Texas is not a relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

The Districts are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party."⁷ How much debt service coverage AWU charges the State of Texas as a customer as well as additional customers other than the Districts is important, because AWU's classification impacts the Districts' rates due to AWU's actions to "functionalize, allocate, and equitably distribute. . . costs to the different types of customer classes served by the utility."⁸ AWU states that it has used the DSC method specifically "to determine and ensure all customer classes provide sufficient revenue to achieve AW's targeted coverage level"⁹ and challenges who among the customer classes is paying their "fair share" and argues that other customers are subsidizing the rates of the Districts.¹⁰ However, the Districts suspect that AWU is not charging other classes the full cost of reasonable and necessary costs, which results in District rates that are unjust or unreasonable. Furthermore, failure to properly allocate and charge the State of Texas and other customers could result in prejudicial and discriminatory rates in violation of Chapter 13 of the Texas Water Code.

3. **DISTRICTS 10-3:** How much water did AWU sell to the State of Texas during the test year?

Objections: Austin Water objects to this request because it seeks information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a). Districts make several requests regarding Austin Water's services to the

⁷ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

⁸Statement of Intent to Change Rates, p. 232, Attachment Direct Testimony of Richard D. Giardina, p. 11, lines 12 to 14 (Apr. 15, 2019).

⁹ Statement of Intent to Change Rates, p. 36, Attachment Direct Testimony of David Anders, p. 23, lines 6 to 8 (April 15, 2019).

¹⁰ Statement of Intent to Change Rates, pp. 26-27, 32, and 37, Attachment Direct Testimony of David Anders, p. 13, line 21 to p. 14, line 5; p. 24, lines 23 to 24 (April 15, 2019).

State of Texas. However, Austin Water's specific treatment of the State of Texas is not relevant to Austin Water's proposed wholesale water and wastewater rates for Districts. Specifically, Districts' RFI No. 10-3 requests information regarding the amount of water which Austin Water sold to the State of Texas during the test year. The amount of water which Austin Water sold to the State of Texas in the test year is not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

The Districts are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party."¹¹ How much water AWU sold to the State of Texas as well as additional customers other than the Districts is important because it impacts the rates AWU charges the District. As referenced by AWU's witnesses, the "[t]he cost allocation process includes a multiple step process which is outlined in the M1 Manual."¹² AWU witnesses admit that:

AW has chosen the Base-Extra Capacity allocation method which uses the water demand parameters of base costs, max-day usage, peak-hour usage, meters, customer billing, readiness to serve, and fire protection. For a detailed discussion of this method see the M1 Manual Chapter III.2.¹³

The M1 Manual referenced by AWU's witnesses states the following with respect to allocation of costs based on volume usage:

As discussed previously, base costs are costs that would be incurred in supplying water at a perfect load factor (i.e., at a continuous, uniform rate), without costs incurred in providing extra plant capacity for variation in the rate of use beyond a

¹¹ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

¹² Statement of Intent to Change Rates, p. 244, Attachment Direct Testimony of Richard Giardina p. 23, lines 4-5 (April 15, 2019).

¹³ Statement of Intent to Change Rates, p. 246, Attachment Direct Testimony of Richard Giardina p. 25, lines 13-16 (April 15, 2019). *See also* Statement of Intent to Change Rates, p. 115-116, Attachment Direct Testimony of Joseph H. Gonzalez, p. 45, lines 15-16, and p. 46, lines 2-15 (April 15, 2019)

uniform rate. The resulting distribution of cost responsibility for base costs is simply a function of the volume of water used by each class.¹⁴

AWU provides water and sewer service to the many buildings owned by the State of Texas in the City. However, AWU's Cost of Service Model does not provide any information about the volume of water provided to those State facilities.¹⁵ AWU challenges who among the customer classes is paying their "fair share." It argues repeatedly that that other customers are subsidizing the rates of the Districts.¹⁶ However, the Districts suspect that AWU is not charging other classes the full cost of reasonable and necessary costs, which results in District rates that are unjust or unreasonable. Furthermore, failure to properly allocate and charge the State of Texas and other customers could result in prejudicial and discriminatory rates in violation of Chapter 13 of the Texas Water Code.

4. **DISTRICTS 10-4:** What were the rates charged to the State of Texas for water and wastewater service during the test year? And for FY2020?

Objections: Austin Water objects to this request because it seeks information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a). Districts make several requests regarding Austin Water's services to the State of Texas. However, Austin Water's specific treatment of the State of Texas is not relevant to Austin Water's proposed wholesale water and wastewater rates for Districts. Specifically, Districts' RFI No. 10-4 requests information regarding the rates which Austin Water charged the State of Texas during the test year and FY2020. The rates which Austin Water charged the State of Texas during the test year and FY2020 are not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates in its are just and reasonable. The FY2020 rates are especially irrelevant, as future rates are not included in the

¹⁴ Statement of Intent to Change Rates, p. 286, Attachment RDG-2 to Direct Testimony of Richard Giardina p. 19 of 23 (April 15, 2019) (Second Paragraph regarding "Distribution of Costs Under Base-Extra Capacity Methodology").

¹⁵ Statement of Intent to Change Rates, p. 1277, Schedule II-F, Allocation Factors(a) – Base Demand (April 15, 2019).

¹⁶ Statement of Intent to Change Rates, pp. 26-27, 32, and 37, Attachment Direct Testimony of David Anders p. 13, line 21 to p. 14, line 5; p. 24, lines 23 to 24 (April 15, 2019).

Application of the City of Austin DBA Austin Water for Authority to Change Water and Wastewater Rates (Application).

The Districts are entitled to “obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”¹⁷ How much AWU charges the State of Texas and other customers impacts the total amount of revenue deducted from AWU’s overall revenue requirement, which remaining costs are used to calculate the Districts’ rate. As noted in the argument related to Districts’ Request 10-4, AWU witnesses admit that:

AW has chosen the Base-Extra Capacity allocation method which uses the water demand parameters of base costs, max-day usage, peak-hour usage, meters, customer billing, readiness to serve, and fire protection. For a detailed discussion of this method see the M1 Manual Chapter III.2.¹⁸

The M1 Manual referenced by AWU’s witnesses states the following with respect to allocation of costs based on volume usage:

As discussed previously, base costs are costs that would be incurred in supplying water at a perfect load factor (i.e., at a continuous, uniform rate), without costs incurred in providing extra plant capacity for variation in the rate of use beyond a uniform rate. The resulting distribution of cost responsibility for base costs is simply a function of the volume of water used by each class.¹⁹

AWU acknowledges that, once costs are allocated under the Base-Extra Capacity method, the revenue requirement for each customer class can be calculated.²⁰ Finally, AWU recognizes that the rates for each customer class can be calculated using the revenue requirement for a customer.²¹

¹⁷ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

¹⁸ Statement of Intent to Change Rates, p. 246, Attachment Direct Testimony of Richard Giardina p. 25, lines 13-16 (April 15, 2019). *See also* Statement of Intent to Change Rates, p. 115-116, Attachment Direct Testimony of Joseph H. Gonzalez, p. 45, lines 15-16, and p. 46, lines 2-15 (April 15, 2019)

¹⁹ Statement of Intent to Change Rates, p. 286, Attachment RDG-2 to Direct Testimony of Richard Giardina p. 19 of 23 (April 15, 2019) (Second Paragraph regarding “Distribution of Costs Under Base-Extra Capacity Methodology”).

²⁰ Statement of Intent to Change Rates, p. 247, Attachment Direct Testimony of Richard Giardina p. 26, lines 16-18 (April 15, 2019).

²¹ *Id.* at p. 27, lines 7-9 (April 15, 2019).

AWU provides water and sewer service to the many buildings owned by the State of Texas in the City. However, AWU's Cost of Service Model does not provide any information about the rates charged for water provided to those State facilities. AWU challenges who among the customer classes is paying their "fair share" and argues that other customers are subsidizing the rates of the Districts.²² However, the Districts suspect that AWU is not charging other classes the full cost of reasonable and necessary costs, which results in District rates that are unjust or unreasonable. Furthermore, failure to properly allocate and charge the State of Texas and other customers could result in prejudicial and discriminatory rates in violation of Chapter 13 of the Texas Water Code.

5. **DISTRICTS 10-5:** What are the rate case expenses charged to AWU customers other than the Petitioners for the Raftelis Cost of Service Models for water and wastewater identified in Mr. Giardina's letter to AWU dated November 13, 2017?

Objections: Austin Water objects to this request because it seeks information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a). Specifically, Districts' RFI No. 10-5 requests information regarding rate case expenses which Austin Water charged customers other than the petitioners for the Raftelis Cost of Service Models identified in Mr. Giardina's letter to Austin Water dated November 13, 2017. Austin Water is not seeking recovery of expenses related to the Cost of Service Models identified in Mr. Giardina's 2017 letter, which Districts reference. Austin Water has prepared a Cost of Service study for its Application, but has not included any expenses related to this study in its proposed rates. Additionally, Austin Water is not required to obtain Commission approval of rate case expenses in this proceeding before charging them to Districts. Therefore, the requested information is not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

The Districts are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party."²³ AWU is confused about

²² Statement of Intent to Change Rates, pp. 26-27, 32, and 37, Attachment Direct Testimony of David Anders, p. 13, line 21 to p. 14, line 5; p. 24, lines 23 to 24 (April 15, 2019).

²³ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

rate case expense requirements. Rate Case expenses were an important part of the prior case, which Austin failed to justify. The rate case expenses charged to customers other than the Districts are important to ensure that the Districts are not being asked to subsidize expenses to calculate the entire Cost of Service model that was used to calculate all customer rates.

6. **DISTRICTS 10-8:** Did AWU decrease rates for the other districts that are wholesale customers of the City consistent with the reductions that the PUC ordered in Docket No. 42857?

Objections: Austin Water objects to this request because it seeks information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a). Specifically, Districts' RFI No. 10-8 requests information regarding Austin Water's rates for wholesale customers other than Districts. The rates which Austin Water charges wholesale customers other than Districts are not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates in its Application are just and reasonable. The Commission's jurisdiction extends only to the four Districts, being that they were Petitioners in Docket No. 42857. As such, the Commission's order in Docket No. 42857 only applies to the four Districts. Therefore, this request is irrelevant to this proceeding.

The Districts are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party."²⁴ Whether AWU made decreases for other districts that are wholesale customers consistent with the reductions ordered in Docket No. 42857 is important to ensure that the Districts are not are not being asked to subsidize expenses to calculate the entire Cost of Service model that was used to calculate all customer rates. AWU challenges who among the customer classes is paying their "fair share" and claims other customers are subsidizing the rates of the Districts.²⁵ However, the Districts suspect that AWU is not charging other classes the full cost of reasonable and necessary costs, which results in District

²⁴ *Id.*

²⁵ Statement of Intent to Change Rates, pp. 26-27, 32, and 37, Attachment Direct Testimony of David Anders, p. 13, line 21 to p. 14, line 5; p. 24, lines 23 to 24 (April 15, 2019).

rates that are unjust or unreasonable. Furthermore, failure to properly allocate and charge the State of Texas and other customers could result in prejudicial and discriminatory rates in violation of Chapter 13 of the Texas Water Code.

7. **DISTRICTS 10-20:** Is the electricity that Austin Energy provides to the State of Texas Green Choice (as referenced on page 22, line 18 of Mr. Gonzales' direct testimony) electricity?

Objections: Austin Water objects to this request because it seeks information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a). Districts make several requests regarding Austin Water's services to the State of Texas. However, Austin Water's specific treatment of the State of Texas is not relevant to Austin Water's proposed wholesale water and wastewater rates for Districts. Specifically, Districts' RFI No. 10-20 requests information regarding whether the electricity that Austin Energy provides to the State of Texas is "Green Choice" electricity. Austin Energy's classification of Green Choice electricity is not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

The Districts are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party."²⁶ Whether AWU is charging the State of Texas for Green Choice electricity is important to ensure that AWU is not asking the Districts to pay for Commission-disallowed expenses, especially if other AWU customers are not paying for those same expenses through the rates that AWU charges those other customers. AWU challenges who among the customer classes is paying their "fair share" and argues repeatedly that other customers are subsidizing the rates of the Districts.²⁷ Moreover, AWU boldly included expenses in its revenue requirements of this docket such as Green Choice Electricity that the Commission has already prohibited it from charging the Districts. The Districts

²⁶ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

²⁷ Statement of Intent to Change Rates, pp. 26-27, 32, and 37, Attachment Direct Testimony of David Anders, p. 13, line 21 to p. 14, line 5; p. 24, lines 23 to 24 (April 15, 2019).

suspect that AWU is not only not charging other classes the full cost of reasonable and necessary costs, but it is also charging costs deemed inappropriate previously by the Commission. Furthermore, failure to properly allocate and charge the State of Texas and other customers could result in prejudicial and discriminatory rates in violation of Chapter 13 of the Texas Water Code.

8. **DISTRICTS 10-21:** Is the electricity that Austin Energy provides to Travis County Green Choice electricity?

Objections: Austin Water objects to this request because it seeks information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a). Specifically, Districts' RFI No. 10-21 requests information regarding whether the electricity that Austin Energy provides to Travis County is "Green Choice" electricity. Austin Energy's classification of Green Choice electricity is not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

The Districts are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party."²⁸ Whether AWU is charging Travis County for Green Choice electricity is important to ensure that AWU is not asking the Districts to pay for Commission-disallowed expenses, especially if other AWU customers are not paying for those same expenses through the rates that AWU charges those other customers. AWU challenges who among the customer classes is paying their "fair share" and argues repeatedly that other customers are subsidizing the rates of the Districts.²⁹ Moreover, AWU boldly included expenses in its revenue requirements of this docket such as Green Choice Electricity that the Commission has already prohibited it from charging the Districts. The Districts suspect that AWU is not only not charging other classes the full cost of reasonable and necessary costs, but it is also charging costs deemed inappropriate previously by the Commission. Furthermore, failure

²⁸ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

²⁹ Statement of Intent to Change Rates, pp. 26-27, 32, and 37, Attachment Direct Testimony of David Anders, p. 13, line 21 to p. 14, line 5; p. 24, lines 23 to 24 (April 15, 2019).

to properly allocate and charge Travis County and other customers could result in prejudicial and discriminatory rates in violation of Chapter 13 of the Texas Water Code.

9. **DISTRICTS 10-25:** How much additional debt will AWU incur during FY2020 for the water system?

Objections: Austin Water objects to this request because it seeks information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a). Specifically, Districts' RFI No. 10-25 requests information regarding the amount of additional debt Austin Water will incur in the future for its water system. Austin Water's future water system debt is not relevant to the determination of whether Austin Water's current proposed wholesale water and wastewater rates in its Application are just and reasonable. Additionally, any estimate of future indebtedness would be entirely speculative.

The Districts are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party."³⁰ How much additional debt AWU will incur for its water system in FY2020 is important, because it impacts AWU's overall revenue requirement that AWU says "functionalize, allocate, and equitably distribute. . . costs to the different types of customer classes served by the utility."³¹ This goes to the issue of DSC, which methodology AWU has made central to its ratemaking in this docket. Moreover, AWU challenges who among the customer classes is paying their "fair share" and argues that other customers are subsidizing the rates of the Districts.³² However, the Districts suspect that AWU is not charging other classes the full cost of reasonable and necessary costs, which results in District rates that are unjust or unreasonable. Furthermore, failure to properly allocate and charge the State

³⁰ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

³¹Statement of Intent to Change Rates, p. 232, Attachment Direct Testimony of Richard D. Giardina, p. 11, lines 12 to 14 (Apr. 15, 2019).

³² Statement of Intent to Change Rates, pp. 26-27, 32, and 37, Attachment Direct Testimony of David Anders, p. 13, line 21 to p. 14, line 5; p. 24, lines 23 to 24 (April 15, 2019).

of Texas and other customers could result in prejudicial and discriminatory rates in violation of Chapter 13 of the Texas Water Code.

10. **DISTRICTS 10-26:** How much additional debt will AWU incur during FY 2020 for the wastewater system?

Objections: Austin Water objects to this request because it seeks information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a). Specifically, Districts' RFI No. 10-26 requests information regarding the amount of additional debt Austin Water will incur in the future for its wastewater system. Austin Water's future wastewater system debt is not relevant to the determination of whether Austin Water's current proposed wholesale water and wastewater rates in its Application are just and reasonable. Additionally, any estimate of future indebtedness would be entirely speculative.

The Districts are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party."³³ How much additional debt AWU will incur for its wastewater system in FY2020 is important because it impacts AWU's overall revenue requirement that AWU says "functionalize, allocate, and equitably distribute. . . costs to the different types of customer classes served by the utility."³⁴ This goes to the issue of DSC, which methodology AWU has made central to its ratemaking in this docket. Moreover, AWU challenges who among the customer classes is paying their "fair share" and argues that other customers are subsidizing the rates of the Districts.³⁵ However, the Districts suspect that AWU is not charging other classes the full cost of reasonable and necessary costs, which results in District rates that are unjust or unreasonable. Furthermore, failure to properly allocate and charge the State

³³Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

³⁴Statement of Intent to Change Rates, p. 232, Attachment Direct Testimony of Richard D. Giardina, p. 11, lines 12 to 14 (Apr. 15, 2019).

³⁵ Statement of Intent to Change Rates, pp. 26-27, 32, and 37, Attachment Direct Testimony of David Anders, p. 13, lines 21 to p. 14, line 5; p. 24, lines 23 to 24 (April 15, 2019).

of Texas and other customers could result in prejudicial and discriminatory rates in violation of Chapter 13 of the Texas Water Code.

11. **DISTRICTS 10-37:** What is the annual subsidy for the AWU Residential CAP program?

Objections: Austin Water objects to this request because it seeks information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a). Specifically, Districts’ RFI No. 10-37 requests information regarding the Austin Water’s annual subsidy for its Residential Customer Assistance Program (CAP). Austin Water’s Residential CAP, including the amount of any subsidy, is not relevant to the determination of whether Austin Water’s current proposed wholesale water and wastewater rates are just and reasonable. Austin Water’s Application does not include any expenses to Districts related to Austin Water’s Residential CAP.

The Districts are entitled to “obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.”³⁶ What AWU charges annually for its Residential CAP Program is important because it impacts AWU’s overall revenue requirement that AWU says “functionalize, allocate, and equitably distribute. . . costs to the different types of customer classes served by the utility.”³⁷ AWU challenges who among the customer classes is paying their “fair share” and argues that other customers are subsidizing the rates of the Districts.³⁸ However, the Districts suspect that AWU is not charging other classes the full cost of reasonable and necessary costs, which results in District rates that are unjust or unreasonable. Furthermore, failure to properly allocate and charge the State of Texas and other

³⁶ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

³⁷Statement of Intent to Change Rates, p. 232, Attachment Direct Testimony of Richard D. Giardina, p. 11, lines 12 to 14 (Apr. 15, 2019).

³⁸ Statement of Intent to Change Rates, pp. 26-27, 32, and 37, Attachment Direct Testimony of David Anders, p. 13, line 21 to p. 14, line 5; p. 24, lines 23 to 24 (April 15, 2019).

customers could result in prejudicial and discriminatory rates in violation of Chapter 13 of the Texas Water Code.

12. **DISTRICTS 10-40:** How much does the City charge the State of Texas for drainage fees?

Objections: Austin Water objects to this request because it seeks information that is not relevant to the subject matter of the proceeding, as is required by 16 TAC § 22.141(a). Districts make several requests regarding Austin Water's services to the State of Texas. However, Austin Water's specific treatment of the State of Texas is not relevant to Austin Water's proposed wholesale water and wastewater rates for Districts. Specifically, Districts' RFI No. 10-40 requests information regarding the amount of drainage fees which Austin Water charges to the State of Texas. The drainage fees Austin Water charges to the State of Texas are not relevant to the determination of whether Austin Water's proposed wholesale water and wastewater rates are just and reasonable.

The Districts are entitled to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party."³⁹ What drainage fee costs were charged to the State of Texas and additional customers other than the Districts is information necessary to ensure that the Districts are not being asked to subsidize expenses to calculate the entire Cost of Service model which was used to calculate all customer rates. AWU challenges who among the customer classes is paying their "fair share" and argues repeatedly that other customers are subsidizing the rates of the Districts.⁴⁰ Moreover, AWU boldly asserts that although the Commission previously disallowed drainage fee costs in Docket No. 42857, it is including them in the rates subject of this docket. The Districts suspect that AWU is not only not charging other classes the full cost of reasonable and necessary costs, but it is also charging costs deemed inappropriate previously by the Commission. Furthermore, failure to properly allocate and charge

³⁹ Tex. R. Civ. Proc. 192.3(a); 16 TAC § 141(a).

⁴⁰ Statement of Intent to Change Rates, pp. 26-27, 32, and 37, Attachment Direct Testimony of David Anders, p. 13, line 21 to p. 14, line 5; p. 24, lines 23 to 24 (April 15, 2019).

the State of Texas and other customers could result in prejudicial and discriminatory rates in violation of Chapter 13 of the Texas Water Code.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Districts 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 pray that the Administrative Law Judges issue an Order Compelling AWU to respond to the Districts' Tenth Request for Information and grant the Districts other such relief to which they may be entitled.

Respectfully submitted,



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ATTORNEYS FOR DISTRICTS

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve 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 to all parties on this the 14th day of October 2019.



Randall B. Wilburn / John J. Carlton