



Control Number: 49189



Item Number: 130

Addendum StartPage: 0

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discovery of admissible evidence.² The Districts intended their Requests to be comprehensive and provide meaningful responses well in advance of the Districts' deadline to file their direct testimony in this case, which is due tomorrow, October 18, 2019.

As the ALJs know, the Districts agreed to the accelerated schedule in this matter based upon representations that the City made during the Preliminary Hearing. Specifically, Mr. Brocato stated that the City would be forthcoming and respond quickly and fully to discovery requests. However, as shown in **Exhibit A** to this Motion, the City has objected to nearly every one of the Districts' Requests. The City has failed to reply to Districts' Requests in compliance with the Commission rules, has failed to provide indexes to the voluminous materials that the City produced reluctantly and untimely, and the City filed Errata that revised much of its direct testimony and schedules on October 4, 2019 ("City's Errata"),³ only 14 days before Districts' prefiled testimony is due and seven days *after* the Districts' deadline to serve discovery on the new material in the Errata. Finally, today, the day before the Districts' direct testimony and exhibits are due, the Districts are just now able to obtain hard copies of the City's voluminous material in response to Districts' Requests for Information No. 9 and 10. And while the City is producing paper copies, the City has refused to provide the Excel files as the Districts requested.⁴ In addition, the City has yet to file responses to Districts' Requests for Information 3-1 or 4-6 or a voluminous index for the City's production in response to Districts' Second Request for Information, all as required by SOAH Order No. 5 issued on October 9, 2019.

By intentionally delaying its responses and production, the City has prevented the Districts from conducting discovery as allowed by Commission rule. Furthermore, the City's delay tactic has caused the District irreparable harm and unfair prejudice unless the ALJs temporarily abate the hearing and allow the Districts a full opportunity to prepare their direct case.

² Tex. R. Civ. Proc. 192.3; 16 TAC § 22.141(a).

³ City of Austin D/B/A Austin Water's Errata, Docket No. 49189, Item 39 (October 4, 2019).

⁴ See Electronic Mail Exchange Between John Carlton and Thomas Brocato, October 16, 2019, attached as **Exhibit B**.

II. MOTION FOR TEMPORARY ABATEMENT

The City refused repeatedly to provide Districts with discovery that complies with the requirements of Commission Procedural Rule § 22.144(h), even after the Districts filed eight Motions to Compel requesting indices as required by the rule. At this late stage in the hearing process, the Districts have no other recourse than to file this Motion for Abatement.

The City's rate filing package and direct case in this matter initially consisted of 3,731 pages of material,⁵ and the City's response to Districts' discovery in this matter resulted in 299 additional documents of 10,114 pages and include 198 additional Excel spreadsheets in native format with at least 600 tabs. The Commission's rules set the framework for production of documents by requiring the producing party to provide a detailed index of the documents being produced when that production is 100 pages or more.⁶ The Commission intended the rule to prevent abuse of the discovery process by a party producing voluminous records that require the requesting party to review thousands of pages in order to glean the relevant and responsive information. The City has engaged in this very ploy, burying the Districts in thousands of pages of documents. The sifting through so much information without a proper index is a massive and unduly burdensome task. There is simply no way that the Districts can analyze the documents in the short amount of time before the deadline for filing the Districts' direct testimony.

The Districts understand the ALJs concerns as expressed in Order No. 3 regarding the tightness of the schedule and the ALJs attempt to maintain the existing schedule. However, at this point, with the City's continued efforts to not provide the Districts with the information necessary to prepare the Districts' direct testimony and exhibits, fairness and justice require that the schedule be revised.

Commission rules entitle the Districts to discovery on City's Errata before filing their direct case. The Districts request that the ALJs abate the proceeding until the City has properly responded to the Districts' Requests and the Districts have an opportunity to reasonably prepare their direct case.

⁵ See Application of the City of Austin D/B/A Austin Water for Authority to Change Water and Wastewater Rates, Docket No. 49189, Item 2 (April 15, 2019).

⁶ 16 TAC § 22.144(h)(4).

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 temporarily abating this matter for a sufficient amount of time to allow the Districts to prepare their testimony in a manner that is not prejudicial, and grant Districts other such relief to which they may be entitled. Time is of the essence.

Respectfully submitted,



John J. Carlton

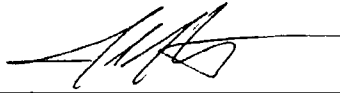
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ATTORNEYS FOR DISTRICTS

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, or Certified Mail Return Receipt Requested to all parties on this the 17th day of October 2019.



John J. Carlton

EXHIBIT A

<u>DATE</u>	<u>DESCRIPTION</u>
08/08/2019	Districts' First Request for Information to City <ul style="list-style-type: none">• 08/28/2019 City filed Responses to First Request <i>City produced 8 pdf files, totaling 2,069 pages</i>• 09/19/2019 Districts filed Motion to Compel City to Respond per Commission Rules• 09/26/2019 City's Response to Districts' Motion to Compel City to Respond per Commission Rules• 10/11/2019 City filed Index of Voluminous Materials
08/09/2019	Districts' Second Request for Information to City <ul style="list-style-type: none">• 08/22/2019 City filed Objections• 09/03/2019 City filed Responses to Second Request <i>City produced 106 pdf files, totaling 5,474 pages, and 54 Excel spreadsheets in native format containing 373 tabs</i>• 09/19/2019 Districts filed Motion to Compel City to Respond per Commission Rules• 09/26/2019 City's Response to Districts' Motion to Compel City to Respond per Commission Rules• 10/15/2019 City filed Supplemental Responses to Second Request (related to crosswalk for revised models in Austin Errata filing on 10/04/2019)• 10/16/2019 City provided legible crosswalk to parties• 10/17/2019 No voluminous index filed as of this date for original production
08/30/2019	Districts' <u>Corrected</u> Third Request for Information to City <ul style="list-style-type: none">• 09/09/2019 City filed Objections to 3-1, 3-3, 3-4 and 3-34• 09/16/2019 Districts filed Motion to Compel• 09/19/2019 City filed Partial Responses to Third Request <i>City produced 30 pdf files, totaling 165 pages, and 21 Excel spreadsheets in native format containing 108 tabs</i>• 09/23/2019 City filed Response to Districts' Motion to Compel• 09/25/2019 Districts' Second Motion to Compel City to Respond per Commission Rules• 10/02/2019 City filed Response to Districts' Second Motion to Compel• 10/15/2019 City filed Index of Voluminous Materials• 10/17/2019 No Response to 3-1 filed as of this date as Order by SOAH Order No. 5 on 10/9/2019

<u>DATE</u>	<u>DESCRIPTION</u>
08/30/2019	Districts' <u>Corrected</u> Fourth Request for Information to City <ul style="list-style-type: none">• 09/09/2019 City filed Objections to 4-6• 09/16/2019 Districts filed Motion to Compel• 09/19/2019 City filed Responses to Fourth Request <i>City produced 2 Excel spreadsheets in native format containing 2 tabs</i>• 09/23/2019 City filed Response to Districts' Motion to Compel• 09/25/2019 Districts' Second Motion to Compel City to Respond per Commission Rules• 10/02/2019 City filed Response to Districts' Second Motion to Compel• 10/17/2019 No Response to 4-6 filed as of this date as Order by SOAH Order No. 5 on 10/9/2019 (Required per Austin Errata filing on 10/4/2019)
08/30/2019	Districts' <u>Corrected</u> Fifth Request for Information to City <ul style="list-style-type: none">• 09/09/2019 City filed Objections• 09/16/2019 Districts filed Motion to Compel• 09/19/2019 City filed Responses to Fifth Request <i>City produced 1 pdf files, totaling 292 pages</i>• 09/23/2019 City filed Response to Districts' Motion to Compel• 09/25/2019 Districts' Second Motion to Compel City to Respond per Commission Rules• 10/02/2019 City filed Response to Districts' Second Motion to Compel• 10/17/2019 No voluminous index filed as of this date for original production
09/11/2019	Districts' Sixth Request for Information to City <ul style="list-style-type: none">• 09/23/2019 City filed Objections• 09/30/2019 Districts filed Motion to Compel• 10/01/2019 City filed Responses to Sixth Request <i>produced 43 pdf files, totaling 1,000 pages, and 6 Excel spreadsheets in native format containing 33 tabs</i>• 10/07/2019 City filed Response to Districts' Motion to Compel• 10/15/2019 City filed Response to Sixth Request, 6-10 to 6-15 <i>Produced 61 paged in PDF</i>• 10/16/2019 City filed Index to Voluminous Materials

<u>DATE</u>	<u>DESCRIPTION</u>
09/20/2019	Districts' Seventh Request for Information to City <ul style="list-style-type: none">• 09/30/2019 City filed Objections• 10/03/2019 Districts filed Motion to Compel• 10/10/2019 City filed Response to Districts' Motion to Compel• 10/10/2019 City filed Responses to Seventh Request <i>City produced 115 Excel files in native format with unquantified number of tabs</i>• 10/10/2019 City filed Index of Voluminous Materials
09/20/2019	Districts' Eighth Request for Information to City <ul style="list-style-type: none">• 09/30/2019 City filed Objections• 10/03/2019 Districts filed Motion to Compel• 10/10/2019 City filed Response to Districts' Motion to Compel• 10/10/2019 City filed Responses to Eighth Request
09/23/2019	Districts' Ninth Request for Information to City <ul style="list-style-type: none">• 10/03/2019 City filed Objections• 10/14/2019 City filed Index of Voluminous Materials <i>Listed 3 PDF files of 286 pages, the printed output for 7 Excel files of 155 pages, and 2 PowerPoint files of 21 pages.</i>• 10/14/2019 City filed Response to Ninth Request <i>Attached 44 printed PDF pages</i>• 10/14/2019 City filed Index of Voluminous Materials, 9-9 to 9-20 <i>Listed the printed output of 2 Excel files of 1120 pages</i>• 10/14/2019 City filed Response to Ninth Request, 9-9 to 9-20• 10/15/2019 City filed Supplemental Response to 9-16 <i>Attached 2 printed PDF pages</i>• 10/17/2019 Districts obtained copies of printed voluminous production made available at office of City's attorneys
09/25/2019	Districts' Tenth Request for Information to City <ul style="list-style-type: none">• 10/07/2019 City filed Objections to 14 Requests• 10/14/2019 Districts filed Motion to Compel• 10/15/2019 City filed Partial Response to Tenth Request• 10/15/2019 City filed Index to Voluminous Materials <i>Listed the printed output of 10 Excel files of 392 pages and two printed PDF files of 263 pages</i>• 10/17/2019 Districts obtained copies of printed voluminous production made available at office of City's attorneys

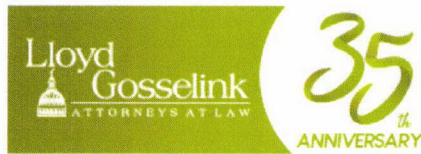
<u>DATE</u>	<u>DESCRIPTION</u>
09/27/2019	Districts' Eleventh Request for Information to City <ul style="list-style-type: none">• 10/07/2019 City filed Objections• 10/14/2019 Districts filed Motion to Compel

Responses to Districts' RFIs Since SOAH Order No. 5

Thomas Brocato <tbrocato@lglawfirm.com>
To: John Carlton <john@carltonlawaustin.com>
Cc: "Randall B. Wilburn" <rbw@gwtxlaw.com>

Thu, Oct 17, 2019 at 11:45 AM

The Order you obtained prevents us from doing so. It is very specific in that regard. We are in the process of complying with the Order and the rule. Neither the rule nor your carefully considered definitions provide for electronic or native material. I suppose we could agree to provide electronic copies by agreement in lieu of the indexes but you didn't want that and we have already given the indexes to you pursuant to Order No. 5 anyway. If you want to withdraw your request for abatement/prehearing and objections to District's 10th RFI we would consider it. Let me know if that works for you.



THOMAS L. BROCATO

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On Oct 16, 2019, at 5:26 PM, John Carlton <john@carltonlawaustin.com> wrote:

Thomas

After reviewing the City's responses to our RFIs and the Voluminous Indices that you have filed since the issuance of Order No. 5 on October 9th, it appears that you are no longer producing documents electronically as you threatened to do in your pleadings.

We have arranged for our copy service pick up the City's voluminous production tomorrow for copying for our records. Based on your indices and responses, it appears that you are only producing the paper copies of the printouts of those files in response to our RFIs. However, there are numerous Excel spreadsheets, including models, that are responsive to RFIs 9-6 (Attachment 1 and 2), 9-9 (Items 1 and 2) and 9-26 (Items 1-7), 9-28 (Attachment 1), 9-31 (Attachment 1), 9-33 (Attachment 1), 9-34 (Attachment 1), 9-39 (Attachment 1) and 10-39 (Items 1-8 and 10).

On October 10th, you provided electronic copies of the Excel spreadsheets responsive to RFIs 7-92 (Items 1-3), 7-98 (Items 1-8), 7-99 (Items 32), 7-106 (Items 1-3), 7-107 (Items 1-32), 7-107 (Items 1-33), 7-110 (Items 1-2), 7-119 (Item 1), which is what you have previously produced, and what the Districts' expected in response to their RFIs.

Are you willing to produce the electronic copies of those Excel files without the need for me to file a Motion to Compel tomorrow?

John J. Carlton

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